

*The Law of Arrests in both Courts 1826.*

July 13 <sup>RE</sup>  
THE <sup>44</sup>  
**Law of Arrests**  
IN BOTH *In both cases*  
CIVIL and CRIMINAL *Criminal*  
CASES: <sup>C7</sup>

Shewing

For what Causes, by what Authority, by whom, and *how* Arrests are to be made; what *Persons* and *Places* are privileged, and *who* protected from Arrests; how to raise a *Hue and Cry*; the Consequences of Opposing, Resisting, Preventing, and Flying from Arrests; the Treatment under Arrest and in Gaol; the Fees on Arrests, Commitments, &c. the Nature of Bail, Escapes, Rescues, Breach of Prison, and of being legally discharged out of Prison, &c.

Necessary for *Sheriffs, Under-Sheriffs, Sheriffs Bailiffs, Coroners, Justices of Peace, Mayors and Bailiffs of Cities and Towns, Constables, &c. as well as Debtors, Creditors, Prisoners, and all private Persons.*

In TWO PARTS.

By an ATTORNEY at Law.

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# PREFACE

THIS Treatise is designed for the Instruction of Officers, and the Information of private Persons, together Debtors, Prisoners, &c. in the Law of Arrests, and also the daily Experience of  
JULY 1908  
them tolerably acquainted with their Power and Duty, yet in this Treatise they may find a great Variety of adjudged Cases, which may improve their Knowledge, and thereby show the Danger, they are too often liable to. And as an Arrest is most commonly the first step to Justice, it is necessary that all People should know for what Causes, and by whom they are to be made, in what Cases only by proper Officers, and in what

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T H E

P R E F A C E.

**T**HIS Treatise is designed for the Instruction of Officers, and the Information of private Persons, whether Creditors, Debtors, Prisoners, &c. in the Law of Arrests; and altho' the daily Experience of some Officers, makes them tollerably acquainted with their Power and Duty, yet in this Treatise they may find a great Variety of adjudged Cases, which may improve their Knowledge, and thereby shun the Dangers they are too often liable to. And as an Arrest is most commonly the first Step to Justice, it is necessary that all People should know for what Causes, and by whom they are to be made, in what Cases only by proper Officers, and in what

## The P R E F A C E.

by common Persons commanded or permitted by Law; also what Persons and Places are privileged; how to raise a Hue and Cry, and how far a Hundred is answerable for Robberies; the Consequences of opposing, resisting and flying from Arrests, and of Escapes, Rescues, and breaking out of Prison; the Treatment of Prisoners, and how they may be discharged; the Fees on Arrests, &c. and what Bail is required in different Cases: All which, with a great Variety of other Matters, are plainly and methodically treated of, so there needs no Apology for the Publication, as there has not been any Thing of the Kind before; the Subject Matter is compiled from the Reports, Acts of Parliament, and other Books of Authority.

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THE  
LAW  
OF  
ARRESTS.

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INTRODUCTION.

**A**N *Arrest*, (from *arrest*, Fr. Derivation  
to stop or stay) is the Taking, <sup>and Defi-</sup>  
Attaching or Seising a Person <sup>nition.</sup>  
or Thing, either by a publick Officer  
in Execution of the Command of some  
Court or Minister of Justice, or by a  
private Person, according to the Com-  
mand or Permission of the Law: Or  
B it

it is the Staying a Judgment given by  
a Court.

This is the general Definition of an  
*Arrest*; but the following Treatise is  
chiefly limited to *Arrests* of the Body,  
which are either in *Civil* or *Criminal*  
Cases.

PART

h by the staying a Judgment given

# PART I. OF ARRESTS

IN

Civil Cases.

## CHAP. I.

*For what Causes Persons may, or may not, be arrested.*

**N**O Person is to be arrested by any Process issuing out of a superior Court, unless the Cause of Action amounts to ten Pounds or upwards; nor by Process of an inferior Court, unless the Cause of Action amounts to forty shillings or upwards; but must be served



personally with a Copy of the Process within the Jurisdiction of the Court. Yet if the Cause of Action amounts to 10 Pounds or 40 Shillings, as aforesaid, the Plaintiff must make and file an Affidavit thereof (which may be sworn before any Judge or Commissioner of the Court, out of which such Process shall issue; or else before the Officer who shall issue the Process, or his Deputy;) and the Sum specified in such Affidavit must be indorsed on the Back of such Writ or Process, for which Sum the Sheriff, &c. must take Bail, and for no more. But if any Writ or Process issue for 10 Pounds or upwards, and no Affidavit or Indorsement is made, the Plaintiff must not arrest the Body of the Defendant, but must proceed as before directed, where the Cause of Action does not amount to 10 Pounds, or 40 Shillings, as aforesaid. Stat. 12 Geo. 1. c. 29. continued by 5 Geo. 1. c. 27.

2. And where the Cause of Action does not amount to 10 Pounds in a superior Court, nor to 40 Shillings in an inferior Court, no special Writ, nor Process specially expressing the Cause of Action, must be issued; and every Attorney or Officer of such Courts forbearing or issuing any such Process, forfeit

10 Pounds

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6 Pounds to the Person aggrieved. Stat. Geo. 2. c. 27.

3. And no Person is to be arrested in Actions on penal Statutes nor in Slander, Trespass, Battery, Wounding or Imprisonment, unless by Order of Court, or Warrant from a Judge of the Court out of which the Process issued; nor in Covenant, unless for the Payment of Money.

4. An Attorney of the Common Pleas brought an Action of Debt against another, whereupon he was arrested in the Country; and when he came to London the Attorney caused him to be arrested in London for the same Debt; and this was shewn to the Court, and the Attorney called; to whom *Anderson* said, "If a Man be sued here for a Debt, and after be arrested in another Court for the same Debt, the Penalty is Fine and Imprisonment; and that is both the Law and Custom of this Court." And so the Attorney was committed to the Fleet.

*Mic. 28 & 29 Eliz. Goldsb. 301.*

B 3

CHAP.

CHAP. II.

*By what Authority Arrests are to be made.*

1. **I**N Civil Cases Arrests are by Virtue of some Process, Precept or Commandment of some Court.

2. The King cannot command any one by Word of Mouth to be arrested ; but he must do it by Writ, or Order of his Courts, according to Law. 2 *Inst.* 186.

3. And the Officer to whom the Process, &c. is directed, is not to dispute the Authority of the Court, but must execute it at his Peril.

4. Upon an Information in the Star-Chamber (*M. 3 Jac. 1.*) by the Attorney General, against several Serjeants at Mace, and others, for arresting *Isabella*, Countess of *Rutland*, by a *Ca. ad satisfaciendum*, upon a Judgment in Debt ; it was resolved for good Law (by *Egerton* Lord Chancellor, *Popham* and *Gawdy* Chief Justices, *Fleming* Chief Baron, and by all the Court) that the Sheriff, or his Officers by his Warrant, might execute the Writ, on the Body of the Countess ; and tho' it appeared in the *Cap.* that she was a Countess (against whom

whom by Law no *Capias* in such Case lies, & *quod Ignorantia Furis non excusat*;) yet forasmuch as in some Cases (as of Contempt, &c. a *Capi* doth lie against a Countess, or any Peer of the Realm, &c.) therefore it was resolved, that the Sheriff and his Officers, or Ministers, ought not to examine the Judicial Act of the Court, but ought to execute the Writ. *Dalton's Sheriff* 104. And so it is held in *Dyer* 60. and 9 Co. 68. 10 Co. 70 and 76. b.

5. And if a Court shall award a Process to the Sheriff, to arrest a Man without Cause, the Sheriff or his Officers are not punishable for arresting him; and altho' the Justices afterwards amend their Process, yet the Sheriff, &c. shall be discharged. 20 H. 6. pl. 5. Arrests without Cause.

6. Yet this Difference is to be regarded, that when the Court hath Jurisdiction of the Cause, and shall proceed *inverso ordine*, or erroneously, the Officer or Minister of the Court is excusable, so as no Action will lie against him: But where the Court hath no Jurisdiction of the Cause, the Proceedings are *coram non Judice*, and an Action will lie against the Officer, without any Regard of the Precept or Process of the Court; for it is not necessary to obey him who is not Judge of the Court, no more than a mere Stranger; for

*Judicium à non suo Judice datum, nullius est momenti.* Dalt. 106.

Of Arrest  
without  
Writ.

7. And if any Sheriff, or other Person having Authority to execute Writs, make any Warrant for the Summons of any Person, as upon any Writ or Suit, or for the Arrest or Attaching of any Person by his Body or Goods, to appear in any of the Courts at *Westminster*, or elsewhere, (not having before that the Original Writ or Process warranting the same,) upon Complaint thereof to the Justices of Assize of the County, or to the Judges of the Court out of which the Process issued, not only the Party that made such Warrant, but the Procurers thereof shall be sent for by Attachments, or otherwise, as the Judges shall think good, and be examined upon their Oaths. And if the Offence be confessed, or proved by Witnesses, the Judges shall commit the Offenders to the Gaol of the County, or Court where the same shall be examined, until they have satisfied the Party grieved not only the Sum of 10 Pounds, but also all such Costs and Damages, as the Judges shall set down, that the Party hath sustained thereby, and 20 pounds a-piece for their Offence to the King. Stat.

43 Eliz. c. 6.

8. And



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8. And by the Stat. 6 Geo. I. c. 21. no High-Sheriff, Under-Sheriff, their Deputies or Agents, shall make out any Warrants, before they have in their Custody the Writs upon which such Warrants ought to issue, on Forfeiture of 10 Pounds. And every Warrant, to be made out upon any Writ out of the King's Bench, Common Pleas, or Exchequer, before Judgment, to arrest any Person, shall have the same Day and Year set down thereon as shall be set down on the Writ, under Forfeiture of 10 Pounds to be paid by the Person who shall fill up or deliver out such Warrant.

CHAP. III.

*By whom Arrests are to be made.*

**T**HE Sheriff is the proper Officer for executing all Writs and Processes in Civil Causes, and to him they are to be directed; for he is the immediate Officer of the King and all his Courts. And is sworn to do his Office without any Favour, Dread or Corruption. But in some special Cases, where there is good Cause of Exception to or against the Sheriff, Writs or Process must be awarded

Coroner.

to the Coroner, who then stands in the Place of the Sheriff. As,

2. 1st, Where it is alledged by either the Plaintiff or Defendant, that the Sheriff is Cousin, or otherwise of Kindred, or Tenant to the other Party, and the other Party doth not deny it, in such Cases Process must be directed to the Coroners of the County, and must be executed by them. *Dalt. Sher. 97.*

3. 2dly, And where the Sheriff is Party to the Suit, the Process must be directed to the Coroner. *Keilw. 96. b.* But *Dalton p. 97.* observes, that there is much Contrariety in our Books herein; for some hold a Difference where the Sheriff is Plaintiff, and where Defendant; for where he is Plaintiff, the Process shall be directed to him against the Defendant, and he may serve it himself, except where he is named Sheriff in the Writ; for there the Coroners must execute it; and the Writ to the Coroners in such Cases is, that the Sheriff *se non intromittat*.

4. Yet in *Gro. Car. 415. Donne v. Smetbier and Leigh*, upon a Writ of Error brought to reverse a Fine, because the Writ of Covenant was directed to the Coroners, with this Clause in the End of the Writ, *Quia predictus Joh. Done Miles, est Vicecomes Comitatus Cestrie, fiat execu-*

*tid*

### Chap. III. in Civil Cases.

11

*Writio brevis prædict. per Coronator' ita quod Vicecomes non se intromittat,* where the Writ ought to have been directed to the Sheriff, &c. Notwithstanding the Council for the Plaintiff in Error said, 1st, That if the Sheriff had been the sole Party to the Fine, the Writ ought to have been directed to him, because it is but a Summons; and the Sheriff may summon himself. 2dly, That the Sheriff is not the sole Party, but others are joined with him, &c. Yet all the Court resolved, that it was not Error; for if the Writ be directed to the Sheriff, and he is Party, it is doubted in the Books, if the Sheriff, as Plaintiff, may execute the Writ himself; and as Defendant, may execute a Writ upon himself: And therefore it were good, to avoid that Doubt, to take a Writ directed to the Coroners, as well where the Sheriff is Plaintiff as Defendant, upon Surmise thereof in Chancery, at the Time of the Suing the Writ. And it is the general Course to award the Writ to the Coroners, to avoid the Doubt of Delay; for if he be Plaintiff and makes not such Surmise, the Defendant peradventure will take Exceptions in Abatement of the Writ; or if Defendant, he may plead in Abatement of the Writ, and cause him to have a new Writ.

5. 3dly,

5. 3dly, And in some Cases where the Sheriff makes Default in serving the Process, it must be directed to the Coroners. *Dalton's Sheriff* 98.

6. 4thly, And an Attachment must be directed to the Coroners against the Sheriff, for his Default in not serving or returning the Process, &c. *Ibid.*

7. 5thly, And where Partiality is found in the Sheriff, the Process shall be directed to the Coroners; and the Writ must be, that the Sheriff shall not intermeddle. *Ibid.*

8. But if the Sheriff be dead or removed, or there be no Sheriff, the Process must not be directed to the Coroners, but must stay 'till another Sheriff is chosen; *ibid.* for the Sheriff being the immediate Officer of the Court, Process must not go to the Coroners but only in special Cases, as above.

9. Where the original Process is once directed to the Coroners, all the Residue of the Process in that Suit must likewise be directed to the Coroners, altho' that Sheriff be removed, dead, acquitted, and another indifferent Sheriff be chosen, depending that Suit and Process. *Ibid.* 99.

10. If a Process is directed to the Coroners, and there be four of them, by some Opinions any two of them may serve and

and execute, or return the Process; for the plural Number is observed; but one of them alone cannot execute or return such Process. And yet by 31 *Aff.* 20. *Br. Officer* 22. the Return must be by all four. And Mr. *Stamf. fol.* 53. saith, that where Process is awarded to the Coroners, all of them within the same County ought to serve the same, otherwise it is not good; for they do this as a Minister, and not as a Judge, as they do in other Cases. *Ibid.* And yet if three of the Coroners die, the fourth may execute and return the Process, until more Coroners be chosen. *Co. Lit.* 181. b.

II. On an Information for a Riot committed in *Chester*, it was suggested upon the Roll, that one of the Sheriffs was a Defendant, upon which a *Venire* was directed to the other Sheriff; and that Jury having found them guilty, it was moved in Arrest of Judgment, that the *Venire* should have been awarded to the Coroner, because both Sheriffs make but one Officer; or rather, that both Persons make but one Sheriff; *sed non allocatur*; for tho' one be challenged, the other may execute the Writ; but he does it in the Name of both; as where one arrests a Man, or neglects to arrest him, the Arrest or Neglect is the Act or Neglect of both.



both. The Coroners are not the proper Officers of the Court in any other Case, but where the Sheriff is absolutely improper; not where there is no Sheriff at all. If the Sheriff die, the Coroner cannot execute, &c. In the Case of two Coroners, if one be challenged, the other must act; and yet both make but one Officer. So in this Case, one Sheriff is challenged, *ergo* the other must act. 1 Salk. 152.

Other Sheriffs.

12. The *Venire facias* in a Suit against the Citizens of York was awarded to the Sheriff of the County, because the Officers of the City were Citizens. Dalton 99.

High-Sheriff only.

13. For Favour in the Under-Sheriff, (*viz.* where he is of Kindred, &c. to either Party) that being alledged, the Process must be directed to the High-Sheriff, with this Clause, *that the Under-Sheriff shall not meddle.* And so where the Sheriff is a Party. *Ibid.*

Elifors.

14. But if both the Sheriff and Coroners be found partial or faulty, the Process must be directed unto certain other Persons to be chosen or named by the Court, who are called Elifors, or Esli-fors, who must serve and execute the same.

15. Also

15. Also in a Place exempt out of e- Guardian  
very County (as the Palace of *Westmin-* of the Pa-  
*ster* is,) there the Writ must be directed lace.  
to the Guardian or Keeper of the Palace;  
for he is there the immediate Officer to  
the Court, and in Nature and Stead of  
the Sheriff. *Dalton* 100.

16. And sometimes Process must be Bishop.  
directed to the Bishop, &c. as where the  
Defendant is named or returned to be  
Clerk, *Non habens Laicum Feodum*, there  
a *Venire facias Clericum* shall go to the  
Bishop, and by Virtue thereof he shall  
sequester the Benefice of such Clerk, to  
compel him to appear and answer; and  
must also warn his Person to keep his  
Day, &c. And if the Defendant cometh  
not at this Day, a *Distringas Episcopum*  
shall go out to the Sheriff, to cause the  
Bishop to make his Clerk to come in;  
and thereupon may the Bishop sequester  
all the Benefices of the Defendant, and  
shall answer to the King for the Is-  
sues thereof, &c. But if the Bishop be  
a Party to the Suit, the Process shall be  
directed to the Metropolitan: And *Sede*  
*vacante* of the Metropolitan, the Process  
must be directed *Gardiano spirituali Archi-*  
*episo.* *Ibid.*

17. In some Cases the Constable and  
Lieutenant of the Tower must receive Constable  
and Lieu-  
tenant of  
and the Tower.

and execute the King's Writs; as where the Mayor and Sheriffs of London be faulty. *Dalton* 101.

Justices.

18. And some Writs are directed to the Justices, as Writs of Error, &c. and sometimes to the Lords of whom Lands are holden, to Stewards, Mayors, Bailiffs, or other Officers of Manors, Cities, Boroughs, or Towns, within which the Lands do lie; as every Writ which concerns any Freehold-Tenant in London

Lords  
Stewards,  
&c.

Mayor and  
Sheriffs.

should be directed to the Mayor and Sheriffs of London. But all other Writs at Common Law within the City ought to be directed to the Sheriff only. And sometimes Writs must be directed to the Parties themselves. *Ibid.*

Parties.

## CHAP. IV.

### *Who may (or may not) be arrested.*

1. **P**EERS of the Realm or their Servants may not be arrested, neither may Members of Parliament or of Convocation, or their Servants in the Time of Parliament or Convocation, in certain Days before and after; nor Ambassadors or their Servants; nor the King's Servants, without Leave; nor the Lord Mayor of London;

nor

nor those Persons whose Attendance is requisite in any of the King's Courts at *Westminster*, as the Judges and their necessary Servants, Clerks and Attornies, &c. But for further Particulars relating to privileged Persons, or Persons exempted from Arrests in Civil Matters, observe the following Sections of this Chapter.

2. The Person of the King is so sacred, King, that no violent Hands may in any Case be laid upon him; neither may he be impleaded or sued by Action; but where the King shall seise any Man's Land, or take away his Goods (having no Right by his Laws to do so,) the Subject for his Remedy must sue unto his Sovereign by way of Petition only. *Stamf. de Prærog.* 42, 72, 73.

3. And the King by Writ of Protection might protect his Debtor from being sued or attached, until his Debt paid. But by *Stat. 25 E. 3.* the other Creditors may have Actions against the King's Debtor, and proceed to Judgment, but not to Execution, unless they will pay the King's Debt, &c. *Co. Lit.* 131. *b.* *Vide Stat. 12 E. 3. W. 3. post.*

4. In *Pas. 18 Car. 2. B. R.* The King King's  
against *Moulton, &c. Bailiffs*, and *Sum-* Servants,  
*mer*, a Messenger, the Court declared,  
that

that none of the King's Servants in Ordinary can be arrested without Notice first given to my Lord Chamberlain, who cannot privilege any perpetually, but in convenient Time must either remove such, or make them pay their Debts, the Privilege being the King's, not the Parties; but if the Bailiffs without Notice do arrest any such, the Messengers of my Lord Chamberlain cannot rescue the Prisoner by Letter, (the Arrest being lawful) nor his Warrant, but the Party is punishable for his Contempt; for no Man can know the King's Servant by his Face, but he must shew his Privilege upon the Arrest: Also, 2. The Court conceived, the Warrant of my Lord Chamberlain to the Messenger, to take all Persons that detain such Prisoner, is a Rescue, and against Law, and it ought only to be against the Plaintiff that sued, for the Bailiffs had the King's Writ for their Warrant to arrest, and had no Notice before the Arrest that he was the King's Servant; the Court spared Attachments and Return of the Sheriff 'till this Matter be settled, but they were clear that the Law is as before; and the Party arrested here was *Sir George Hamilton*, one of the Privy Chamber. 2 *Keb.* 3.



5. The King's Servant is not so privileged from Arrests, but that the Sheriff ought to return his Writ, unless he sheweth his Priviledge on the Arrest. 1 *Keb.* 40.

6. *Dixon* had a Debt due to him from *Killegrew*, a grand Officer of the King's Household, and for that he could not arrest him, he took out Process and outlawed him; and *Killegrew* hearing of it caused the Plaintiff to be imprisoned; and *Dixon* obtained an *Habeas Corpus* of the Chief Justice in the Vacation, and an *Alias* and *Pluries*; and upon Speech with the King, the Chief Justice informed him in this Manner (as the Chief Justice reported in open Court,) viz. *That his Servants are free from Arrests, and therefore he should not be deprived of them without his Leave*; but this Privilege is for the Advantage of the King, but not for his Servants, and therefore they may be sued, so as he be not deprived of them, and so may be outlawed. But notwithstanding this Resolution, *Dixon* was arrested again, and imprisoned, and now *Killegrew* moved for a *Pluries Habeas Corpus*, and the Court granted a *Habeas Corpus*, but not a *Pluries*, because none was granted before in open Court. *Raym.* 152.

King's Servants.

Queen's Servants.

7. In *H.* 16 & 17 *Car.* 2. *B. R.* The Court discharged one *Starkie*, being committed

mitted by the Queen's Vice-Chamberlain to a Messenger of hers, for arresting her Servant; and *per Curiam* such have no Privilege more than a Servant of Queen Dowager, but only the King's Servants.  
1. *Keb.* 842.

**Privilege of Peerage.** 8. *More* arrested the Earl Rivers by *Bill of Middlesex* in a Plea of Debt, and not being able to put in sufficient Bail was committed to the Custody of the Marshal of the *Marshalsea*; the Earl brings himself into Court by *Habeas Corpus*, and there pleads his Privilege of Peerage, and says, that he ought not to be arrested, and demands Judgment of the Writ, and prays to be delivered. To this the Plaintiff demurred. The main Question the Earl's Counsel insisted on was, whether by taking away the House of Lords in Parliament, whereby their Voice and Place in Parliament was gone, the Privilege of his Peerage not to be arrested for Debt, was also taken away? and he argued, that it was not; for he said, that at the Common Law no *Capias* did lie against a Peer; and the Statute of *Edw. 3.* which gave a *Capias* of Debt against others, did not give it against a Peer. The Reasons, he said, why an Earl had the Privilege not to be arrested, are two: The 1st, in respect of the

Dignity

Dignity of his Person, being called, *Comes à comitando Rege*, (as some have thought;) and he is called by the King *Consanguineus noster*. The 2d is in respect of Sufficiency of his Estate in Lands to be summoned by, and not by reason of his Place in Parliament; for they have the Privilege not to be arrested as well in the Vacancy of Parliaments, as when the Parliament sits; and the Privilege of Parliament is, that he shall not be sued; but the Privilege of Peerage is, that he shall not be arrested in his Person; and so they are distinct Privileges; and by taking away the Lords House, the former Privilege is taken away, but not the latter; and this Privilege (annexed to the Person) not to be arrested, may belong to a Person that hath not the Privilege of Parliament, as unto Widows of Peers, which could not be arrested, and yet had no Place in Parliament; so that the excluding them from the Parliament doth only take away their Privilege of Parliament, and not their Privilege of Peerage: and *Nevil's Case* is, that the Privilege not to be arrested belongs to them, in Respect of the Dignity of their Persons. 9 Rep. *Salop's Case*. And it has been a Question, whether *Comes* be so called *à comitando rege*, or in respect of the Counties

ties whereof they were Earls? And I conceive the latter Derivation is the truer; and then Taking away the King takes not away their Privilege, for the Counties remain. 2dly, Earls have by Intendment sufficient Freehold, to enforce them to come in and answer at this Day; and therefore are not to be arrested; and Imprisonment of a Man's Person for Debt was but a Supplement, to make him answer where he had not sufficient Freehold, which we cannot intend here. *Nat. Brev. fo. 93.* And an Earl shall be amerced higher than another Man, in Regard of the Presumption of his Freehold; and Earls are called *Majores Barones* in this Respect, 7 E. 4. *Nevil's Case*; and the Widow of an Earl had the Privilege not to be arrested, for the two very Reasons, that her Husband had it; so was it of a Bishop, Abbot and Prior of *England*; but otherwise it was of a Bishop that had a Bishoprick out of *England*. And the Statute that takes away the Kingly Office, doth not take away their Names, and Dignities, nor the Presumption that they have Freeholds; and therefore they are not to be arrested; and there will be since the Act no more Failer of Right than there was before, and so pray'd the Writ might be abated.



Roll C. J. answered, Your Client ought to have prayed the Writ might have abated, before he was turned over to the Marshal of this Court, for then he was in *Middlesex*, where he was arrested; but now it is too late, for he is in *Custodia Mariscalii*, and any Body that hath any Cause of Action may declare against him. *Ferman J.* said, that the Writ is now determined, which you pray to have abated; so your Prayer is to no Purpose. Roll C. J. said, that the Dignity of the Person of an Earl may relate to him as he is Peer of the Parliament, and the other Presumption that he hath sufficient Freehold may also fail; but it does not appear here by Averment, that he hath not Freehold, therefore it may be a Question, Whether there shall be intended a Failer of Justice for Want of a Freehold, if the Party should not have been arrested; and he agreed, that an Earl, as a Peer of Parliament, had a double Privilege; one of his Person, being free from Arrests; the other of his Estate, to be free from Suits. And he said, if it had appeared by the Averment, that the Party had Freehold, it had been good without Doubt to free him from Arrests. *Ferman J.* said, he is now in *Custodia*, and the Declaration against him is good



good; and now it is too late to claim his Privilege. *Nicholas* in all Points was against the Privilege. *Roll C. J.* What say you to them that have Declarations on the Bye against the Earl? for certainly they are good, whether he be rightly committed or not, for they are not to examine his Commitment; and therefore it is surely too late to speak in Abatement of the Writ. *Style 222.*

Privilege  
of the  
House of  
Lords.

Persons.

9. The Privilege of the House of Lords is, that no Lord of Parliament sitting the Parliament, or within the usual Times of Privilege shall be imprisoned or restrained without Sentence or Order of the House, unless for Treason or Felony, or for refusing to give Security for the Peace. *Per Ord. 18. Apr. 1626.*

Goods.

10. And their Goods taken in Execution are to be delivered as well as their Persons. *Ib. 8 May 1628.*

Servants.

11. And all their menial Servants and those of their Family, and also those employed necessarily and properly about their Estates as well as their Persons, are privileged. This Freedom begins from the Date of the Writ of Summons in the Beginning of every Parliament, and continues 20 Days before and after every Session. *Ibid. 28 May 1624.*

12. By *Stat. 1 Jac. 1. c. 13.* If any Person being arrested in Execution, and by Privilege of either House of Parliament set at Liberty, the Party at whose Suit such Execution was pursued, his Executors or Administrators, after the Privilege of that Session of Parliament, in which such Privilege shall be granted, shall cease, may sue forth a new Writ of Execution, as if no such former Execution had been served. And no Sheriff or Officer, from whose Custody such Person arrested shall be delivered by Privilege, shall be charged for delivering out of Execution any such Person by Privilege of Parliament set at Liberty. But this Act shall not diminish any Punishment, to be by Censure in Parliament inflicted upon any Person, which shall make or procure such Arrest.

13. By *Stat. 12 & 13 Will. 3. c. 3.* Privilege of Members of Parliament. Any Person may prosecute any Suit in any of his Majesty's Courts at *Westminster*, or in Chancery, or Exchequer, or the Dutchy Court, or in the Court of Admiralty, and in all Causes matrimonial and testamentary in the Court of Archbishops, the Prerogative Courts of *Canterbury* and *Tork*, and the Delegates, and in all Courts of Appeal, against any Lord of Parliament, or any of the Knights,

Knights, Citizens and Burgesſes, of the House of Commons, or their Servants, or any other Person intitl'd to Privilege of Parliament, at any Time immediately after the Dissolution or Prorogation of Parliament, until a new Parliament shall meet, or the same be reassembled, and immediately after any Adjournment of both Houses for above 14 Days, until both Houses shall meet; and the said Courts may after such Dissolution, Prorogation, or Adjournment, proceed to give Judgment and to make final Decrees and Sentences, and award Execution thereupon; any Privilege of Parliament notwithstanding; provided that this Act shall not subject the Person of any of the Knights, Citizens, and Burgesſes, or any other Person intitl'd to Privilege of Parliament, to be arrested during the Time of Privilege; nevertheless if any Person having Cause of Action or Complaint against any Peer, such Person, after any Dissolution, Prorogation, or Adjournment, as aforesaid, or before any Sessions of Parliament, may have such Process out of his Majesty's Court of King's Bench, Common Pleas and Exchequer, against such Peer, as he might have had out of Time and Privilege; and if any Person have Cause of Action against any of the

Knights,

Knights, Citizens, or Burgesſes, or any other Perſons intitled to Privilege of Parliament, after any Diſſolution, Prorogation, or ſuch Adjournment, &c. ſuch Perſon may proſecute ſuch Knight, Citizen or Burgeſs, or other Perſon intitled to Privilege, in his Maſteſty's Courts of King's Bench, Common Pleas, or Exchequer, by Summons and Diſtreſs infinite, by original Bill and Summons, Attachment and Diſtreſs infinite, which the ſaid reſpective Courts are impowered to ſue until they enter a Common Appearance, or file Common Bail; and any Perſon, having Cauſe of Suit or Complaint, may, in the Times aforeſaid, exhibit a Bill or Complaint againſt any Peer, or againſt any of the ſaid Knights, Citizens, and Burgeſſes, or other Perſon intitled to Privilege, in the Chancery, Exchequer or Dutchy Court, and proceed thereupon by Letter or *Subpœna*, uſual, and upon leaving a Copy of the ſame with the Defendant, or at his laſt Place of Abode, may proceed thereon; and for Want of Appearance or Answer, for Non-performance of any Order or Decree, may ſequeſter the Eſtate of the Party, as is uſed when the Defendant is Peer; but ſhall not arreſt the Body of any of the ſaid Knights, Citizens, and

King's  
Debtor or  
Account-  
ant.

Burgesses, or other privileged Person during the Continuance of Privilege of Parliament. And where any Plaintiff shall by Reason of Privilege of Parliament be stayed from prosecuting any Suit commenced, such Plaintiff shall not be barred by any Statute of Limitation or non-suited, dismissed, or his Suit discontinued for Want of Prosecution, but shall upon the Rising of the Parliament be at Liberty to proceed. And no Suit or Proceeding in Law or Equity against the King's original and immediate Debtor for the Recovery of any Debt originally and immediately due unto his Majesty, or against any Person liable to render Account unto his Majesty for any Part of his Revenues, or other original or immediate Duty, or the Execution of any such Process, shall be impeached or delayed by Privilege of Parliament; so that the Person of such Debtor or Accountant, being a Peer, shall not be liable to be arrested; or being a Member of the House of Commons, shall not be arrested during the Continuance of Privilege of Parliament by any such Proceedings.

14. And by Stat. 2 & 3 Anna, c. 11. no Suit may be commenced and prosecuted in any of his Majesty's Courts at Westminster, against any Officer or Person of the



any Person employed in the Revenue, or any other Person of publick Trust, for any Misdemeanor or Breach of Trust relating to such Office of Trust, or any Penalty imposed by Law to enforce the due execution hereof; and no such Suit or execution thereon, altho' such Officer be a Peer, or of the House of Commons, but otherwise intitled to Privilege of Parliament, shall be staid by Privilege. But nothing in this Act shall subject the Person of such Officer, being a Peer, to be arrested; nor subject the Person of such Officer, being of the House of Commons, to be arrested during the Time of Privilege; and against such Person, being of the House of Commons, shall not be issued Summons and Distress infinite, nor original Bill, Summons, Attachment and Distress infinite, which the respective Courts are impowered to issue, until they appear.

15. And by Stat. 11 Geo. 2. c. 24. any Person may commence and prosecute in Great Britain or Ireland, any Suit in any Court of Record or of Equity, or of Admiralty, and in Causes matrimonial and testamentary, in any Court having Cognisance, against any Peer of Great Britain, or against any of the Knights, Citizens and Burgeses,

of the House of Commons of *Great Britain*, or against their menial or other Servants, or any other Person intituled to the Privilege of the Parliament of *Great Britain*, immediately after the Dissolution or Prorogation of any Parliament until a new Parliament shall meet, or the same be re-assembled, and immediately after the Adjournment of both Houses for above 14 Days, until both Houses shall re-assemble. This Act shall not subject any Person intituled to Privilege of Parliament, to be arrested during the Time of Privilege; nevertheless it shall be lawful for any of the Courts of the Great Sessions in *Wales*, Courts of Session in the Counties Palatine of *Chester*, *Lancaster* and *Durham*, Courts of King's Bench, Common Pleas, and Exchequer, in *Ireland*, after any Dissolution, Prorogation, or such Adjournment, or before any Session of Parliament, or Meeting of both Houses, to use such Proceedings, and to issue the like Process against any such Peer, or against any of the said Knights, Citizens, and Burgesses, or other Persons intituled to the Privilege of the Parliament of *Great Britain*, as the Courts of King's Bench, Common Pleas, and Exchequer in *England* are by 12 & 13 W. 3. c. 3. empowered to use; and it shall be lawful

for

For the Chancery of *Ireland*, and the Court of Equity in the Exchequer there, to use such Proceedings, and to issue the like Process, against the Persons aforesaid, as the Chancery of *Great Britain* and the Exchequer in *England* are by the said Act impowered to use; and shall be lawful for any of the other Courts before described, (the Process whereof is not particularly directed by the said Act, or by this Act,) after any Dissolution, Prorogation, or such Adjournment as aforesaid, or before any Session of Parliament, or Meeting of both Houses, to issue like Process against any such Peer, or any of the said Knights, Citizens, or Burgesses, or other Persons intitled to the Privelege of Parliament, as such Courts may now lawfully issue against Persons not liable to be arrested. And where any Plaintiff by Privelege of Parliament shall be stayed from prosecuting any Suit commenced, he shall not be barred by any Statute of Limitation, or nonsuited, dismissed, nor his Suit discontinued for Want of Prosecution, but at the Rising of the Parliament may proceed to Judgment and Execution. And no Proceedings in Law or Equity against the King's original and immediate Debtor, for recovering any Debt originally and immediately due to

his Majesty, or against any Person liable to render an Account for any Part of the Revenues, or other original and immediate Duty, shall be staid in any Court in *Great Britain* or *Ireland* by Privilege of the Parliament of *Great Britain*; yet so that the Person of such Debtor or Accountant, being a Peer of *Great Britain*, shall not be liable to be arrested upon such Suit, or being a Member of the House of Commons of *Great Britain*, shall not, during the Continuance of the Privilege, be arrested upon any such Proceedings.

16. A Member of Parliament is privileged, as well in his Lands and Goods, as in his Person; By *Roll C. J. Mic. 24 Car. B. R.* in Lord *Moburne's* Case, 2 *Liberty's Reg.* 370.

17. If a Member of Parliament be outlawed, and a *Capias Utlagatum* issued against him, and delivered to the Sheriff, he may safely arrest him thereupon; for this Writ is, *quod non omittas propter aliquam libertatem*, so that the Party outlawed cannot be discharged thereof by any Liberty or Privilege; for he which is out of the Protection of the Law, cannot have the Privilege of the Law. *Per Anderson and Periam Justices. H. 31 Eliz.*

18. Ne-

18. Necessary Officers, which attend Officers of  
the Parliament, as Serjeant at Arms, Parlia-  
ment.  
the Porter at the Door, Clerks, and the  
like, shall not be arrested for Debt or  
the like, during their Attendance. *Crompt.*  
*Author. des Courts, fo. 11.* But the Par-  
liament gives no Privilege *tempore vaca-*  
*tionis, sed sedente Curia.* 2 E. 4. fo. 8.  
Bro. Tit. Priv. 56.

19. All Protections and written Cer- Protections by  
ificates of the Members of the House of Members.  
Commons were declared void in Law,  
and none to be granted for the future;  
and if any shall be granted by any Mem-  
ber, he is to make Satisfaction to the  
Party injured, and be liable to the Cen-  
sure of the House. *Per Ord. 30 Jan.*  
*1718.*

20. Clergymen called to the Convo- Clergy.  
cation, &c. and their Servants, shall have  
the Privileges *eundo, morando, & redeun-*  
*do*, which the Peers and Commons of the  
Realm in Parliament have. *Stat. 8 H. 6.*  
*c. 1. Finch 140.*

21. Persons of Holy Church, whilst  
they attend Divine Service in Churches,  
Church-yards, and other Places dedica-  
ted to God, shall not be arrested by Royal  
Authority, or Commandment of tempo-  
ral Lords, in Offence of this Liberty of  
Holy Church, upon grievous Forfeiture,



so as Collusion be not found in the said Persons of Holy Church. *Stat. 1 Ric. 2*

*c. 13.* 22. And if any shall arrest any Person of Holy Church in Churches or Churchyards, against the Liberty of Holy Church, and thereof be convict, he shall have Imprisonment, and be ransomed at the King's Will, and make Gree to the Parties; provided that the People of Holy Church shall not hold them within the Churches or Sanctuaries by Collusion. *Stat. 1 Ric. 2. c. 15.*

Ambassadors and their Servants.

23. By *Stat. 7 Anne, c. 12.* all Process, whereby the Person of any Ambassador, or Publick Minister of any Foreign Prince or State, or the domestick Servants of any such Ambassador, &c. may be arrested, or his Goods distained, shall be adjudged void. And the Persons suing forth such Process, their Attornies and Solicitors, and other Officers executing the same, being convicted thereof by the Confession of the Party, or by the Oath of one Witness, before the Lord Chancellor, and the Chief Justices or any two of them, shall be deemed Violaters of the Laws of Nations; and shall suffer such Penalties and corporal Punishment, as they, or any of them shall judge fit. But no Merchant or Trader, within the De-

scription

Description of any of the Statutes of Bankrupts, putting himself into the Service of any Ambassador, &c. shall have any Benefit by this Act. And no Person shall be proceeded against, as having arrested the Servant of an Ambassador, &c. unless the Name of such Servant be first registered in the Secretary's Office, and transmitted to the Sheriffs of London and Middlesex, who must hang it up in some publick Place in their Office.

24. In *Trin.* 10 G. 1. *Crosse v. Talbot*, Ambassador's Servants. A Motion to set aside an Arrest, and to vacate a Bail-Bond given by the Plaintiff, who was a Domestick of the Duke of Holstein, resident here, he having been registered, &c. pursuant to *Stat. 7 Anne*, granted. *Mo. Ca.* 288.

25. All Persons whose Attendance is necessary in any of the King's Courts Officers of Courts. at *Westminster*, are privileged from Arrest; as the Judges, their necessary Servants, and Ministers of the Courts. *Crompt. 11.*

26. But if one that is a privileged Person in one Court do sue another that is a privileged Person in another Court, that is sued shall not have his Privilege allowed. 2 *Lilly's Abr.* 368.

27. A Clerk of the Court ought not to be arrested for any Thing which is not Clerk of a Court.

cri-

criminal; because he is supposed to be always present in Court, and must answer the Plaintiff there; and therefore he that does arrest him is punishable by the Court. *Trin. 23 Car. 1. B. R.* And therefore such Arrest is accounted vexatious which the Law warrants not. 1 *Lilly Reg. 94.*

Attornies.

28. An Attorney is privileged so long as he is an Attorney upon Record, although he does not practice. *Lutw. 1667.* But not their Servants.

29. Where an Attorney is sued as Executor or Administrator, he shall not be allowed his Privilege; nor in a joint Action, with another not privileged, though if an Action may be served, the Want of Privilege in one shall not take away the Privilege of the other. 1 *Sal. 2, 245.* 2 *Nels. Abr. 1295.*

30. *Pas. 20 Car. 2. B. R.* How again *Woolley.* Powis prayed a *Superfedeas* to a *Latitat*, whereby the Defendant was taken; and because he could not put Bail to the Action which was laid for 5000 *l.* he suggested he was an Attorney of this Court, and claimed his Privilege to be sued by Bill; and *per Curiam* he was discharged, and a *Superfedeas* awarded without coming hither by *Habeas Corpus* out of the Country. 2 *Keb. 338.*

31. Th

31. The Wife of an Attorney, if she be arrested, ought not to claim the Privilege of the Court, not to put in Bail to the Action, as her Husband may, if he be arrested; but her Husband must put in Bail for her; and for Want thereof she is to be committed to Prison. *Tr. 1650. June 25. B. S. 2 Lilly's Reg. 371.*

32. Privilege shall not be allowed to a Man where his Wife is joined in the Action with him. *Noy 68.*

33. Privilege has been allowed for a Clerk in the Office of *Custos Brevium*, and a Writ of Privilege signed by the Judges of C. B. *Cro. Car. 8.*

34. A Filazer's Clerk did claim his Privilege, but was denied it. *Mic. 23 Car.* For tho' the Master may be privileged, yet the Court takes no Notice of the Servant, for he hath no necessary Dependance on the Court. *2 Lilly's Abr. 369.*

35. *Mic. 30 Eliz. in C. B. Povy*, an Attorney of the King's Bench, brought an Action of Trespass there against the Warden of the Fleet, who came into the Common Pleas and demanded the Advice of the Court, because he is an Officer of this Court; and therefore ought not to be impleaded elsewhere: But it was said by the Court, that because the Plaintiff has his Privilege in the King's Bench

Bench as well as the Defendant has here, this Equality of Privilege shall render the Parties at Liberty, and he shall have the Benefit of the Privilege who first begins Suit; and so the Warden of the Fleet was advised to answer. 2 Leon. 41.

Deputy  
Marshal  
of B. R.

36. In Debt upon an Escape brought by *John Guy*, an Attorney of C. B. by an Attachment of Privilege against Sir *Geo. Reynell*, Knight, Deputy Marshal of the Prison of B. R. who pleads his Privilege to be sued in the King's Bench; to which the Plaintiff demurred; and upon Argument of both Parties it was adjudged, that the Defendant should not have his Privilege, because the Plaintiff was an Attorney, and ought to have his Privilege in C. B. and the Suit should not be staid because of the Privilege of the Defendant in another Court. Trin. 7 Jac. 1609. C. B. 2 Brownl. 266, 267.

Privileges  
in the Ex-  
chequer.

37. In the Exchequer there are three Sorts of Persons that are privileged, *i. e.* Debtors of the King, Accountants, and Officers; against the first of these Persons any Man who has a Privilege in another Court, as an Officer or Attorney thereof, shall have his Privilege: But if an Accountant begin his Suit here, he hath in such Case a special Privilege, and no other Privilege shall be allowed against him,



him, because of his Attendance to pass his Account, in which the King hath a particular Concern; and it is the same in an Officer of the Court who commences a Suit here, no Privilege shall prevail against him: Tho' where the Account is closed and reduced to a Debt, there the Accountant hath only the general Privilege as Debtor; and the like of a Servant to an Officer or Minister of the Court, he has no Privilege against a privileged Person elsewhere. *Hardr.* 267, 507.

38. An Accountant to the King in the Exchequer was sued in *B. R.* and Baron *Southerton* came into the Court, and shewed his Book of Accounts to the King, and affirms this to be so in Court, and so prayed the Privilege of the Court for him, and that the Suit here in this Court might be staid. *Telverton*, Justice, asked *Man* the *Secondary*, what the Course of the Court was in such Case, and how the Precedents were, and whether the Court hath used in such Cases to grant the Privilege, upon such a bare Averment of the Baron only; or upon Pleading of this, and Prayer of the same by the Party? *Man* answered, that by all Precedents, upon the Prayer and Averment of the Baron only, and without any Plea by the Party, the Court hath used

Accountant in the Exchequer.

to

to grant the Privilege; and so the same was granted in this Case, by Rule of Court, without any Plea or Prayer of the Party. But *William's* Justice was against it. 2 *Bulst.* 36. *M.* 10 *Jar.*

Lord Mayor of London.

39. The Lord Mayor of the City of *London* is privileged from all Actions during his Mayoralty, in regard of his Office, except it be for Felony or Treason, or Actions which concern-Freehold; this is that he may not be hindred in the Government of the City, which being the Metropolis of the Nation is of higher Concernment in respect of the Publick, than any Man's particular Interest. *Pasf.* 24 *Car. B. R.* 2 *Lilly's Reg.* 370.

Warder of the Tower.

40. *Pasf.* 21 *Car. 2. B. R.* *The King* against *Frampton*. On a *Habeas Corpus* directed to *Wickham* a Messenger of the Lord Chamberlain, who arrested one *Chard* who was a Warder of the Tower, without Leave of my Lord Chamberlain; *Jones* now prayed to be discharged, or at least bailed, such Persons having no Privilege; which the Court agreed; for this is the King's Privilege, not his Servants, and extends only to his menial Servants; and a Warder of the Tower is not such; and the Defendant having petitioned my Lord Chamberlain for Delivery, the Court ordered him to attend

again

again until to-morrow, and gave Leave to amend the Return, but would not have the Prisoner arrested at his Suit discharged. 2 Keb. 485.

41. By Stat. 5 Geo. 2. c. 30. Every Bankrupts. Bankrupt shall be free from Arrests in coming to surrender to the Commissioners, and from actual Surrender for 42 Days, or such further Time as shall be allowed to finish his Examination, provided such Bankrupt was not in Custody at the Time of Surrender; and in Case such Bankrupt shall be arrested for Debt, or on any Escape-Warrant, coming to Surrender, or after his Surrender, within the Time before mentioned; then on producing the Summons or Notice under the Hands of the Commissioners or Assignees, and giving the Officer a Copy thereof, he shall be discharged; and in Case any Officer shall detain such Bankrupt, such Officer shall forfeit to such Bankrupt for his own Use 5 l. for every Day he shall detain him. And in Case any Commission of Bankruptcy shall issue against any Person who shall have been discharged by Virtue of this Act, or shall have compounded with his Creditors, or delivered to them his Effects, and been released by them, or been discharged by any Act of Insolvency, then the

the Body only of such Person shall be free from Arrest and Imprisonment; but the future Estate shall remain liable to his Creditors (the Tools of Trade, necessary Household-Goods, and necessary Wearing-Apparel of such Bankrupt and his Wife and Children excepted) unless the Estate of such Person shall produce clear 15 Shillings in the Pound.

Sailors.

42. By Stat. 1 Geo. 2. St. 2. c. 14. no Person who shall list himself to serve on Board any of his Majesty's Ships of War, shall be liable to be taken out of the Service by any Process or Execution (other than for some criminal Matter) unless for a real Debt, or other just Cause of Action; and unless before the Taking out such Process or Execution, the Plaintiff or some other in his Behalf make Affidavit before a Judge of the Court, out of which such Process, &c. shall issue, on before some Person authorised to take Affidavits in such Courts, that to his Knowledge the Sum justly due to the Plaintiff amounts to 20 l. a Memorandum of which Oath shall be marked on the Writ, for which Memorandum or Oath no Fee shall be taken: And if any Person shall be arrested contrary to this Act, it shall be lawful for a Judge of such Court on Complaint of the Party, or his Officer

cer, to examine the same, and by Warrant to discharge such Seamen without Fees, upon Proof made, that such Seaman was belonging to one of his Majesty's Ships, and arrested contrary to this Act; and also to award Costs, for Recovery whereof he shall have the like Remedy that the Plaintiff might have had for his Costs. And it shall be lawful for any Plaintiff, on Notice first given in Writing of the Cause of Action to such Seamen in his Majesty's Service, or left at his last Place of Residence before his Entering into the Service, to file a common Appearance in any Action for any Debt, so as to intitle the Plaintiff to proceed therein to Judgment and Outlawry, and to have an Execution thereupon, other than against the Body of him so belonging to one of his Majesty's Ships.

43. And by Stat. 11 Geo. 2. c. 2. the Soldiers. same with Respect to a Volunteer-Soldier, only that the original Debt for which he may be arrested by Process or Execution must amount to 10 l.

44. No Attorney shall presume at his Heirs, Executors, and Administrators. Peril, to make, or cause to be made, any Precept or Writ with the Clause *Ac etiam, &c.* against any Heir, Executor, or Administrator; or in any Case where by the Custom of the Court special Bail is not



not required. *Per Reg. Cur. M. 15 Car. 2. B. R.*

Of Arrests  
at the Suit  
of Persons  
unknown,  
or without  
the Plain-  
tiff's Con-  
sent.

45. If any Person shall maliciously, or for Vexation, procure any other to be arrested or attached to answer in the Marshalsea, or in any Court within London, or in any City, Borough, Town corporate, or other Place, where any Liberty is used to hold Plea in Actions personal, at the Suit of any Person where there is no such Person known, or without the Consent of the Person at whose Suit such Arrest or Attachment shall be had, every Person that shall so procure any Arrest, &c. and shall be accused by Indictment, Presentment, or by the Testimony of two Witnesses, or other due Proof, shall suffer Imprisonment 6 Months, and before he shall be delivered shall pay unto the Party arrested or attached treble Costs; and shall also forfeit unto such Person in whose Name he shall procure such Arrest, &c. if there be such Person known, 10 Pounds. *Per Stat. 8 Eliz. c. 2.*

## C H A P. V.

*At what Time Arrests may (or may not) be made.*

I. **T**HE Defendant covenanted to pay Before Money due. to the Plaintiff a Sum of Money on the 24th June; whereupon the Plaintiff takes out a *Latitat*, *Teste* the 3d May, returnable the last Day of *Trinity* Term following, and arrested the Defendant upon it: Which being made appear to the Court, they discharged the Arrest: For tho' it is allowed a Man may take out a *Latitat* before the Money is due, yet the Party must not be arrested upon it before: And this differs from an Original, which if it be tested before the Money due it is abateable; but the *Latitat* is only to bring him into Custody, that the Plaintiff may declare against him by Bill, and after that the Proceedings upon the *Latitat* cease. (By the Custom of *London* the Debtor may be arrested before the Money is due, to make him find Sureties.) It was also moved, that the Defendant might have Costs, being put to the Charge of Motions to be discharged; but the Court would grant none, it being but for taking out of the Pro-

Process of the Court. *Hanway v. Merry*,  
*Pas. 24 Car. 2 B. R. 1 Vent. 28.*

2. A Plaintiff was levied in an inferior Court before a Debt contracted, and an Arrest upon a Process upon the Plaintiff adjudged ill. *Per Cur. Mic. 1 Anne, B. R. Farres. 55.*

Before  
 Writ sued  
 out.

3. *Mic. 15 Car. 2 B. R. Chauncey and Rutter.* In Trespass and false Imprisonment the Defendant justifies by Arrest on *Latitat*; to which the Plaintiff replied, that the Writ was taken out after the Arrest; to which the Defendant demurred; and *per Curiam* the Antedate of the Writ will not suffice if the Proceeding be after, as in *Harrison's Case*, on Obligation not to prosecute before *Easter-Term*, the Defendant saith, he did not; the Plaintiff replies, that he sued forth a Writ returnable in *Easter-Term*, Tested in *Hill Term*; to which he appeared: To which the Defendant rejoined, that he sued forth the Writ after the Beginning of *Easter-Term*, which he is estopped to do, the first Writ being his own, and the Appearance is to that Writ, therefore though prosecuted by another in his Name, is not avoidable; and for the same reason he is concluded to say, that he sued it out after *Easter-Term*. But a Stranger is not concluded to say, the

Writ

Writ was sued out after; and so here, especially the *Latitat* being not suable with any other Teste than of the precedent Term; but Original may be tested at any Time: And Judgment for the Plaintiff, *Nisi*, on Long and Bilton's Case, and Benet and Pilkin's Case, 3 Keb.

4. Trespass and false Imprisonment in London. The Defendant pleads, that *J. S.* sued forth a Writ of *Latitat* the last Day of Trinity-Term, directed to the Sheriff of R. and by Virtue of that the Sheriff of the said County made a Warrant to the Defendant, and he upon that took the Plaintiff; which is the same Imprisonment, *absque hoc*, that he is guilty in London, *vel aliter, vel alio modo*. And the Plaintiff replies, that the said Writ was truly prosecuted after the Imprisonment (*viz.*) the 9th of August. And upon this the Defendant demurs; and adjudged for the Plaintiff, because although the Teste of the Writ is upon Record, and the Plaintiff cannot aver against it; yet here great Inconveniences will be, if the Plaintiff cannot set forth the very Time of the Purchase of the Writ, and the Relation of the Teste is only to prevent Fraud, and not justify a Tort; and Judgment was given for the Plaintiff.

*Bil-*

*Bilton v. Johnson & al. Pas. 19 Car. 2. B. R. Raym. 161.*

Before  
Writ sued  
out.

5. In Trespass of Assault and Imprisonment, the Defendant, as Bailiff of the Sheriff, justified by *Lur.* out of this Court, Teste the 27th of June in Trinity-Term; the Plaintiff replied, that the said Writ was prosecuted out of this Court on the 9th of August, which was after the Arrest of the Plaintiff; to which the Defendant demurred; and *Symson* prayed Judgment for the Plaintiff; but *per Curiam* this is an *Estoppel*, especially in Case of a Bailiff, whose Warrant might be before the Arrest, and all Writs must be Teste as of Term; and the Sheriff not returning the Writ, or not having any, shall not prejudice his Under-Bailiff; but *per Curiam* a good Action will lie against the Sheriff, or a Bailiff of a Franchise; and it was adjourned. *Bilton v. Johnson & Long, &c. Hil. 18 & 19 Car. 2. B. R. 2 Keb. 173.*

Before  
Writ delivered to  
the Sheriff.

6. Trespass for Battery and Imprisonment, 13th June 33 Car. 2. Defendant pleaded, that on the 16th of March Attachment issued out of Chancery to the Sheriff, and that the Sheriff after Delivery of the Writ to him, *scil. May 27*, made a Warrant to the Defendant his Bailiff, whereupon he took him



dem 27 *Maii*, and traverses all other times before the Warrant, or after the return of the Writ. The Plaintiff maintains his Declaration, *absque hoc*, that the Writ was delivered to the Sheriff before the Battery and Imprisonment. The Defendant rejoined, that before the Return of the Writ it was delivered to the Sheriff, *scil.* the said 27th of *May*, and that before the Arrest he had no Notice but that it was delivered to the Sheriff. The Plaintiff sur-rejoined, that before the Arrest the Writ was not delivered to the Sheriff. The Plaintiff rebutted *ut supra*, that he had no Notice, but that the Writ was delivered to the Sheriff before the Arrest; & *de hoc ponit se, &c.* Thereupon the Plaintiff demurred: And now by *Pemberton*, Chief Justice, & *totum Cur.* Judgment was given for the Defendant. For, 1. Whether or no the Writ was delivered to the Sheriff before the Warrant and Arrest, so long as *in re ipsa* there was a Writ to warrant the Arrest, is not material. 2. There being a Writ and Warrant thereupon, the Bail shall not be charged for the Execution thereof; for it is not his Privy, nor hath he Notice when the Writ was delivered to the Sheriff; and he hath rendred an Issue of Notice, which the Plaintiff hath refused

refused to accept. *Osborne v. Brookhouse*  
*Hil' 34 Car. 2. C. B. 3 Lev. 93.*

After the  
 Essoin-  
 Day.

7. In Trespass of Assault and Battery by special Verdict, it appeared that the Defendant, as Bailiff of the Sheriff, arrested the Plaintiff the 10th of February, on a Writ of *Nec omittas* out of C. B. which was returnable *Oftabis Purificat.* which was after the first or Essoin-Day; but the Days of Grace to the Return of the Writ are two Days after: And the Court conceived, that although the Sheriff may return his Writ after, yet his Office, *quoad* arresting, is determined on the Essoin-Day, which being no moveable Feast, the Court may take Notice of the Day of the Month. *Ellis against Jackson. Pas 16 Car. 2. B. R. 1 Keb. 718.*

Arrest in  
 the Night.

8. An Arrest in the Night, as well as the Day is lawful. *9 Rep. 66. Cro. Jac. 486. 3 Salk. 46.*

Arrest on a  
 Sunday.

9. No Person upon the Lord's Day shall serve or execute any Writ, Process, Warrant, Order, Judgment or Decree, (except in Cases of Treason, Felony, or Breach of the Peace,) but the Service of every such Writ, &c. shall be void; and the Persons executing the same shall be liable to answer Damages, as if they had done the same without any Warrant. *Stat. 29 Car. 2. c. 7.*

10. Kel-

Chap. V. In Civil Cases.

51

10. *Kelynge*, upon a Motion of Mr. *Holt*, said, I have known many Attachments for arresting a Man upon a Sunday; but still the Affidavit contained, that he might have been taken on another Day. So for arresting a Man as he was going to Church, to disgrace him. *Hil. 21 & 22 Car. 2. B. R. 1 Mod. 56.*

11. *Eyre* moved to have the Defendant discharged out of Custody, for that he had been arrested on a Sunday by Process out of this Court; but in Truth he was taken without any Warrant on a Sunday, and kept lock'd up till Monday Morning, and then a Writ was got. *Per Curiam*, If you were imprisoned without Warrant, you have your Remedy by false Imprisonment; but then let them shew Cause why Attachment should not go against them. And it was said by *Gould*, that Attachments have gone frequently in such a Case; and so was the Rule here. *Lidford v. Thomas, Hil. 2 Ann. 1. B. R. 6 Mod. 96.*

12. Arrest on a Sunday is a void Arrest, in so much that the Party may have an Action of false Imprisonment for it. *Wilson against Tuckers Trin. 7 Wih. 3. B. R. 1 Salk. 78.*

13. The Defendant was arrested on a Sunday, by a Writ out of the Marshal-

sea, and now the Court was moved to discharge him; but it was denied, and he was directed to bring an Action of false Imprisonment. *Wilson v. Guttery Trin. 7 W. 3. B. R. 5 Mod. 95.*

14. The Bail may take the Principal on a Sunday, and confine him till Monday, and then render him; and this is no serving of Process, for the Entry in *B. R. is Traditur in Balliwm; &c.* 'Tis rather like the Case where the Sheriff arrests the Defendant on a Saturday, and escapes, he may take him on a Sunday; because 'tis only a Continuation of the former Imprisonment. *Mo. Ca. 231.*

On a Day  
of Thankf-  
giving.

15. *In Mich. 650. B. R.* The Court was moved, that one was arrested upon a Day of Thanksgiving appointed by the Parliament, and that he was forced to put in Bond to the Sheriff for his Appearance; and therefore it was prayed, that the Party arrested might be discharged, and that the Bond given to the Sheriff might be delivered up. *Roll J. C. answered,* Indict the Bailiffs that made the Arrest, or bring your Action against them, if you please; for we will not discharge the Party arrested. *Style 238.*



CH A P. VI.

*In what Places Arrests may, or may not, be made.*

1. **N**O Arrest must be in the King's Palace, where his Royal Person resides: King's Palace.
2. The great Mansion-House purchased by the King, late Parcel of the Possessions of the Archbishop of York, and the Park, and the Soil of the ancient Palace at *Westminster* shall be the King's whole Palace at *Westminster*, and shall extend to all the Streets leading from *Charing-Cross* to the *Sanctuary-Gate* at *Westminster*, and in all the Tenements on both Sides of the Street from the said *Cross* to *Westminster-Hall*, situate between the *Thames* on the East, and the *Park-Wall* on the West. *Stat. 28 Hen. 8. c. 12.*
3. In which Privilege no one must be arrested without Leave first obtained by Petition to the Board of Green-Cloth.
4. The Court of the Steward and Marshal of the King's House (i. e. the *Marshealsea-Court*,) shall not pass the Space of twelve Miles, to be counted about the Lodging of the King. *Stat. 13 Ric. 2. St. 1. c. 3.*

Verge of the Court.



A Liberty. 5. By *Glyn* Chief Justice, *Mic.* 1658. If one be arrested by the Sheriff of the County, within a Liberty, without a *Non omittas*, yet the Arrest is good; for the Sheriff is Sheriff of the whole County, but the Bailiff of the Liberty may have his Action against the Sheriff for entring of his Liberty; but upon a *Quo minus* a Sheriff may enter any Liberty, and execute it *impune.* 1 *Lilly* 94.

Palace-Yard.

6. One *Long* was arrested in the Palace-Yard, not far from the Hall-Gate, the Court being then sitting; and being an Attorney of this Court, he, together with the Officer was brought into Court, and the Officer was committed to the Fleet, that he might learn to know his Distance; and because the Plaintiff was an Attorney of the Court of King's Bench, who informed this Court that his Cause of Action was for 200*l.* therefore the Court ordered, that another of the Sheriff's Bailiffs should take Charge of the Prisoner, and that Mr. *Robinson* the Chief Prothonotary should go along with him to the Court of King's Bench, which was done; and that Court being informed how the Case was, discharged the Defendant upon filing common Bail. The Writ upon which *Long* was arrested was an Attachment of Privilege, which the Court

Court supposed to be made on Purpose, to oust him out of his Privilege; for there was another Writ against him at the Sheriff's Office, at the Suit of another Person. *Hill. 28 & 29 Car. 2. 2 Mod. 181.*

7. One *Lea* was sued in an Action of Battery in C.B. and upon the Trial, when the Jury was gone from the Bar, the Defendant caused the Plaintiff to be arrested in the King's Bench, for a Battery done to him by the Plaintiff before, and was shewed to the Court; and thereupon they sent for *Lea*, and were grievously offended with him; for they said, when a Man is sued here he ought safely to come and go by the Privilege of this Place without Vexation elsewhere. And *Lea* pleaded, that he was ignorant of the Law; but the Court answered, that *Ignorantia Juris non excusat*; therefore they would punish him and discharge the other. Then the Plaintiff said, he had put in Bail to the Arrest; and the Court answered, If you had not done so, we would have discharged you, but now we cannot; but they commanded *Lea* to release his Arrest, or otherwise he should smart for it; and *Lea* was well content to do so. [*Anderson*] Yet you shall pay a Fine here also, for otherwise we shall be perjured; wherefore because you are

In Court.

ignorant, you shall be fined at 6 Shillings. And *Lea* paid it, and went to release his Arrest. [*Rodes*] You have escaped well, therefore let this be a Warning. *Mic.* 29 *Eliz.* *Goldsb.* 33.

8. The Defendant coming to give Security of the Peace, was afterwards arrested in Court, upon an Action of false Imprisonment. [*G. 7.*] If it had been to have sworn the Peace, we would have allowed the Arrest; but here he is privileged for the Time. *Rex v. Feilding, Mic.* 2 *Jac.* 2. *B. R. Comberb.* 29.

In West-  
minster-  
Hall.

9. One arrested in *Westminster-Hall* *sedente Curia*, may be discharged upon Motion, if the Arrest was on *Mesne Process*, but not if he was taken in Execution; but even in that Case the Officer is punishable *per Curiam*. 3 *Salk.* 46. *vid.* *Bulst.* 85.

10. But in *Lilly's Reg.* 95. it is said, that One that is not privileged from Arrests, by Reason of his Attendance upon Business in some Court of Justice, or some other way privileged by some special Rule or Order of Court, may be arrested in *Westminster-Hall*, the Courts sitting there. *Mic.* 1649. *B. S.* And it hath been often done; for it is not the Place, but their Business that protects the Parties.

11. G. came to Court to confess Judgment for an Assault upon C. and as he was going home, C. gets him arrested for the same Assault; and upon Motion and Affidavit of this Matter, an Attachment *Nisi* was granted against him, and before the Day he discharges G.; and now coming to shew Cause, the Rule was set aside, because the Affidavit did not charge him to have Notice that G. came to Court to confess the Judgment; for otherwise he could not be in Contempt for the Arrest. *Garibaldo v. Cagnoni*, *Hil. 2 Ann. B. R. 6 Mod. 90.*

Going from Court.

12. One *Powell* was sued in the Common Pleas, and as he was coming to *Westminster*, he was arrested in *London*, and thereupon had a common Writ of Privilege, surmising that he was coming to retain Counsel; and *Walmesley* prayed, that he might be examined whether he did so or not; but the Court would not. [*Walmesley*] It is no Reason, if he be going about other Matters, he should have the Privilege of this Place. [*Curia*] A hundred Writs have been allowed without any Examination. [*Walmesley*] In 10 *Hen. 6* & 4 *Hen. 7.* such an Examination was made. [*Anderson*] But that was not *de rigore Juris*, and all the Court refused utterly to examine him.

Going to Westminster.



But *Walmesley* said privily, that it was against the Law. *Mic. 29 Ed 30 Eliz. Goldsb. 64.*

Witness  
going or  
returning.

13. One that is subpena'd for a Witness may have a Writ of Privilege, to protect him from Arrests in going or returning.

1 *Vent. 11.*

In the  
Temple.

14. The Defendant was arrested in the Temple, and upon a Motion to set it aside, it was insisted for him, that the Temple is \* privileged from Arrests by the King's Grant. But *per Holt C. J.* If the King hath made such Grant, 'tis void in Law, they having no Court of Justice within themselves there; 'Tis true, the Temple is extraparochial, and not within any Parish, nor within the City, so as to come within the Customs of the City, but 'tis within the County of the City; but the *White-Fryars* is within the Jurisdiction of the City; yet the Court inclined not to countenance Arrests in the Temple, especially in *Term Time*, but would not set aside this Arrest; so the Defendant was held to special Bail. *Brown v. Burdace, 9 W. 3. B. R. 3 Salk. 285.*

White-  
Friars,  
Savoy,  
Salisbury-  
Court,

15. Any Person who hath any Money owing him from any Person who shall be in *White-Fryars, Savoy, Salisbury-Court, Ram-Alley, Mitre-Court, Ful-*

\* *Dugdale 317, 320. Stow's Chron.*



Ram-Al-  
 leys,  
 Mitre-  
 Courts  
 Fullers-  
 Rents,  
 Baldwin's  
 Gardens,  
 Mounta-  
 gue-Close,  
 Minories,  
 Mint,  
 Deadmans  
 Place,  
 against such Person, may require the  
 Sheriffs of London and Middlesex, Head-  
 Bailiff of the Liberty of the Duchy of  
 Lancaster, or High-Sheriff of Surrey, or  
 Bailiff of the Borough of Southwark, or  
 their Officers, to take the *Posse comitatus*,  
 or such other Power as shall seem requi-  
 site, and enter the said pretended privi-  
 leged Places, and arrest, and in case of  
 Resistance or Refusal to open the Door,  
 to break open any Doors to arrest such  
 Person upon Meeme or other Process, or  
 to seile the Goods of such Person upon  
 any Execution or Extent, and if the She-  
 riff, &c. shall neglect with such Force to  
 use their best Endeavours for the Exe-  
 cuting of such Process, he shall forfeit  
 to the Plaintiff 100 l. And if in the Exe-  
 cuting of such Process, any Person shall  
 oppose any Officer, he shall forfeit 50 l.  
 and be by some Justice of Peace commit-  
 ted to the common Gaol until the next  
 Assises and Gaol-Delivery, and such Of-  
 fender being convicted shall suffer Impri-  
 sonment, and be set in the Pillory; and if  
 any Rescous be made of any Prisoner  
 taken by such Officers, within the said  
 Places, the Persons making Rescous, or  
 assisting,

assisting, being convicted, shall forfeit  
 500*l* to the Plaintiff; and if the Person  
 against whom such Recovery shall be  
 had, neglect to pay the Sum recovered,  
 with Costs, within one Month after  
 Judgment and Demand made, upon pro-  
 ducing a Copy of the Judgment, and Oath  
 made that the Money is not paid, he shall  
 by Order of such Court wherein he was  
 convicted of such Rescous, be transported  
 for seven Years; And if any Person, in-  
 habiting within any of the said Places,  
 shall conceal any Person who shall have  
 made any Rescous, (knowing of such Of-  
 fence,) being convicted, he shall be trans-  
 ported for seven Years, unless in one  
 Month he shall pay the Plaintiff the Debt  
 for which he brought his Action, with  
 Costs. Stat. 8 Ed 9 W. 3. c. 27. And by  
 a later Stat.

Suffolk-  
 Place,  
 Mint.

16. If any Person within Suffolk-Place,  
 or the Mint, or the pretended Limits  
 thereof, knowingly oppose any Persons  
 serving any Writ, Rule or Order, or o-  
 ther legal Process, or any Escape War-  
 rant, or any Justice of Peace's War-  
 rants, or shall assault or abuse any Per-  
 son serving such Writ, &c. whereby such  
 Persons shall receive any Damage, every  
 Person being convicted thereof shall be  
 guilty of Felony and be transported.

And

And

Chap. VI. *in Civil Cases.*

61

And upon Complaint to any three Justices of Peace for *Surry*, by any Person, who hath any Debt owing him from any Person residing in the *Mint*, &c. (such Creditor having legal Process taken out for Recovery of his Debt, and making Oath before such Justices, that a Debt exceeding 50 *l*. is justly due to him from the Person against whom such Complaint shall be made, and that he believes such Person doth reside in that Place) it shall be lawful for the Justices to issue their Warrant to the Sheriff of *Surry*, or the Bailiffs of *Southwark*, requiring them to take the *Posse comitatus*, or such other Force as they shall think requisite, and enter the said *Mint* and arrest, or in Case of Resistance or Refusal, to break open any Doors to arrest such Person, upon Mesne or other Process, and to seise Goods upon Execution or Extent; and the Sheriff, &c. refusing on such Warrant, with such Force to use his best Endeavours for the Executing such Process, shall forfeit to the Plainriff 200 *l*. And if any Person shall resist any Officer of Justice, or any Person aiding such Officer within the *Mint*, &c. or shall rescue any Prisoner taken upon such Writ, &c. within the said Place, or shall there knowingly conceal any Prisoner so taken, or any

any who rescued such Prisoner, or shall be assisting in resisting such Officer, or in rescuing such Prisoner, or shall exercise any Jurisdiction, or join in making any pretended Rule or Ordinance, for supporting any pretended Privilege within the said Place, or for opposing the Execution of legal Process, &c. every Person so offending, and being convicted thereof on Indictment or Information brought within 6 Months after the Offence, shall be guilty of Felony and transported. And if any Person wearing a Mask or disguised Habit, or having his Face or Body disguised, shall within the said Place, &c. join in or abet any Riot there, or shall in any Disguise knowingly oppose the Execution of any legal Process, &c. or assault or abuse any Person serving such Process, &c. every such Person being convicted shall be guilty of Felony and transported. And every Person who shall apprehend any one guilty of the Offences aforesaid, and prosecute him till convicted, shall receive for every such Offender 40 *l.* to be paid by the Sheriff of Surry without Fee in one Month after such Conviction, and Demand thereof made by tendering a Certificate to the Sheriff of the Judge, before whom such Offender was convicted, certifying his Conviction, and that he was taken by the Person claim-



claiming the Reward; and in Case of Dispute touching the Reward, the Judge shall in the Certificate direct the Reward amongst the Parties, in such Shares as shall seem reasonable; and if such Sheriff shall die or be removed, the succeeding Sheriff shall pay it in one Month; and if the Sheriff make Default, he shall forfeit to the Person to whom such Money shall be due double the Sum he ought to have paid, to be recover'd with double Costs. And if any Person shall be killed by such Offender in endeavouring to apprehend him, the Executors, &c. of each Person so killed (on Certificate of the Judge of Assize, or the two next Justices of Peace) shall receive 40 l. from the Sheriff of the County where the Fact was committed; and on Failure of Payment, such shall forfeit double the Sum to be recovered with double Costs. And if any such Apprehender or Prosecutor is guilty of any of the said Offences, not being in Prison for the same, and convicting two or more, he shall not only have the Reward, but also be intitled to a Pardon; and the Charge of raising the *Posse comitatus*, or other Power, for enforcing the Execution of this Act, or the Act of 8 & 9 W. 3. c. 27. shall be paid by the Sheriff. And nothing in this Act shall repeal the said Act or any Law in Force against

I

pre-



pretended privileged Places, or for suppressing Riots, except in Cases wherein other Provision is made by this Act. *Stat.* 9 *Geo.* 1. c. 28.

Wapping  
Stepney,  
&c.

17. And if any Number of Persons, nor less than three, shall within the Hamlet of *Wapping-Stepney*, or any other Place within the *Bills of Mortality* of the Cities of *London* and *Westminster*, wherein Persons shall unlawfully assemble for the sheltering themselves from their Debts, of which Complaint shall have been made by Presentment of the Grand Jury at a *Quarter-Sessions*, knowingly obstruct any Persons serving any Writ, Rule or Order of any Court, or other legal Process, and shall assault or abuse any Person serving or executing such Writ, &c. whereby such Person shall receive bodily Hurt, the Offender being convicted shall be guilty of Felony and transported for seven Years. And on Complaint to a Judge of any Court out of which the Writ shall issue, of Opposition within the said Hamlet, or elsewhere within the *Bills of Mortality*, wherein Persons shall unlawfully assemble, &c. by any Persons who have Debts due to them from any Persons sheltering, as aforesaid, the Creditor having any legal Writ or Process, and making Oath before such Judge, that a Debt

Chap. VI. in Civil Cases.

65

Debt exceeding 50 *l.* is justly due to him from the Person against whom Complaint shall be made, and that such Creditor verily believes, that the Person is sheltered within such Place, such Judge is authorised to issue his Order to the Sheriff, his Deputy or Officers, injoining him or them to take the *Posse comitatus*, and enter the said Hamlet, or any Place elsewhere, &c. mentioned in the said Oath, and to arrest such Person on any Mesne Process, Extent or Execution, and to seize the Goods of such Person upon any Execution or Extent; and if such Sheriff shall wilfully neglect to use his best Endeavours for the Executing such Process, &c. he shall forfeit to the Plaintiff 200 *l.* And if any Person shall knowingly resist any Officer of Justice in the Execution of any Writ, &c. in the said Hamlet, &c. or shall rescue any Prisoner taken upon such Process, &c. or shall knowingly harbour or conceal any Prisoner so taken, or any Persons who rescued such Prisoner, or shall be knowingly abetting in resisting any such Officer, or in rescuing such Prisoner, the Offender being convicted upon Indictment or Information to be brought within 6 Months after the Offence, shall be a Felon and transported for 7 Years. *Stat. 11 Geo. 1. c. 22.*

CHAP.

## C H A P. VII.

*How Arrests are to be made.*

1. **A**LL Writs and Proceſs directed to the Sheriff, are uſually delivered to the Under-Sheriff, and he makes out Warrants to the Sheriff's Bailiffs to execute them. Or he may make ſuch Warrant to a Stranger.

2. And yet the High-Sheriff may execute them himſelf; or the High-Sheriff may command his Under-Sheriff, Bailiff, or other ſworn or known Officer, to ſerve or execute them. And ſuch Commandment by Word is good, without any Precept in Writing. *Dalt. 103.*

3. But if the Sheriff command another Man (that is no ſworn or known Officer) to ſerve or execute any Writ or Proceſs, or other Warrant, he muſt deliver him the Writ itſelf, or elſe a Precept in Writing; otherwiſe an Action of falſe Impriſonment will lie for the Arrest. *Ibid.*

4. And the Bailiff or other Officer to whom any Warrant is directed and delivered, ought with all Speed and Secrecy to execute the ſame. *Ibid.*

5. If an Action be entred in either of the Counters in *London*, a Serjeant may arreſt the Party without the Sheriff's Warrant.

rant. *Trin. 22 Car. I. B. R.* For the Entry of the Action there, is a Warrant in Law for the Arrest, and the Serjeants are the Attendants at the Counters, and may take Notice of such Entries; it being the Custom of the City, used Time out of Mind. *1 Lilly 94.*

In *Trin. 21 Hen. 7. C. B.* Frowicke C. J. said, that if a *Capias* be directed to the Sheriff to arrest a Man, the Sheriff may command his Bailiffs errant, or his Servant, to arrest the Party without Warrant made to them; for that which the Servant does is his own Act and Deed, and he has Authority to arrest the Party by Force of the Writ, and so of a Servant; and if in this Case the Servant of the Sheriff or his Bailiff errant arrests a Man by Force of a *Capias* awarded to the Sheriff, and the Sheriff does not return the Writ, Action of false Imprisonment lies against the Bailiff errant or the Servant of the Sheriff, and yet no Default in them; but the Bailiff of a Franchise, who hath Return of Writs, may not arrest a Man without a Warrant in Law made upon the said Writ in the Hands of the Sheriff. And if the Bailiff of the Franchise arrest the Party, and does not return the Warrant to the Sheriff, Action of false Im-

pri-



prisonment lies against him by the Party. And if the Bailiff return to the Sheriff, that he has arrested him, and delivered him to the Sheriff, and the Sheriff does not return the Writ of *Capias* to the Court, yet no Action of false Imprisonment lies against the Bailiff of the Franchise. *Keilw. 86. b.*

Assistants  
to arrest.

§6. Every Man is bound by the Common Law to assist not only the Sheriff in his Office for the Execution of the King's Writs (which are the Commandments of the King) according to Law; but also his Bailiff, that hath the Sheriff's Warrant in that Behalf, hath the same Authority which the Sheriff hath, for the Sheriff cannot do all himself, and if they do it, not being required, they shall be fined and imprisoned; but this is to be understood where the Sheriff may lawfully do it, and that before the Sheriff doth use any Force, he ought to demand, according to the Law, the Goods to be delivered, so as Replevy might be thereof made, for *sequi debet potentia mandatum legis, non precedere*, Force ought to follow, and not to precede the Commandment of the Law. *2 Inst. 193.* Of *Passé Comitatus* vid. ante.

Of shewing  
Warrant.

§7. In an Action on the Case *Hodges v. Robert Marks sen. and Robert Marks*

jun.



jun. for a Rescous, it was found  
 upon a special Verdict, that *William*  
*Pawley* sen. and *William Pawley* jun.  
 were indebted to the Plaintiff in 35<sup>l</sup> on  
 several Bonds, and that to recover his  
 Debt, he sued out a *Latitat*, and had  
 a Warrant thereon, &c. And further,  
 that said *William Pawley* was also indebt-  
 ed to *Phil. Perry* sen. and that he had  
 sued out a *Latitat* against him, and had  
 a Warrant to the same Bailiffs; and that  
 about 6 o'Clock at Night they entered in-  
 to the House of *Robert Marks* sen. the  
 Door being open, and *William Pawley*  
 being there present, the said *Phil. Perry*  
 jun. laid his Hands on him, and then ha-  
 ving both the Warrants in his Pocket said  
 unto him, *Here I do arrest you by Virtue*  
*of the Warrant that I have*, but he did  
 not shew unto him the Warrant, nor had  
 it in his Hand, nor told him at whose  
 Suit he arrested him, and that *Phil. Paw-*  
*ley* did not demand to see the Warrant,  
 nor at whose Suit he was arrested; and  
 that the Defendants rescued him from  
 the Bailiffs: And it was resolved first,  
 That this Arrest without shewing the  
 Warrant, and without telling at whose  
 Suit, until the other demanded, was le-  
 gal, and that he needed not shew the  
 Warrant until the other obeyed and de-  
 manded

manded it. Secondly, That this Arrest in the House, the Door being open, and at 6 o'Clock at Night, was good against the Party arrested, and the rescuing him was utterly unlawful. Thirdly, That this Arrest without having the Warrant in his Hand, and having both Warrants about him, was well enough, altho' he did not shew by which of the Warrants he arrested him; for he being under the Bailiff's Arrest, is in Custody there for all Causes for which the Sheriff had made his Warrants against him, although the Sheriff or Bailiff do not mention any specially. Fourthly, That for this Rescous the Plaintiff, at whose Suit the Arrest was, may maintain an Action very well; for he hath the Loss, and cannot have his Action against the Sheriff, and therefore it is Reason he should have his Action against those who did the Injury to him whereby he lost his Process, and his Means to recover his Debt. Whereupon it was adjudged for the Plaintiff. *Cro. Jac.* 485, 486.

Where  
House or  
Door may  
be broke  
open.

8. In 44 *Eliz.* B. R. it was adjudged, That the Sheriff might not break open any Man's House to take Execution, unless in the King's Case, or for a Contempt, &c. *Cro. Eliz.* 908.

9. *Cook* was indicted for the Murder of *Marshal*. Upon his Arraignment he pleaded Not guilty. And it was found that *Marshal* was not a Bailiff to the Sheriff of ———, and had several Warrants upon several *Capias's ad satisfaciendum* against *Cook* and his Father, directed to him and other Bailiffs, and that they by Virtue or Colour thereof entred into *Cook's* Stable and Out-house, and hid themselves there all Night; and, at 8 o'Clock next Morning, came to *Cook's* Dwelling-house, and called him to open his Doors and suffer them to enter, because they had such Warrants upon such Writs, at the Suit of such Persons to arrest him; but *Cook* commanded them to depart, telling them they should not enter; and thereupon they broke a Window, and afterwards came to the Door, and offered to force it open, and broke one of the Hinges; whereupon *Cook* discharged his Musquet at *Marshal* and struck him, of which Stroke the Day following he died. And it was argued for *Cook*, that it was not Murder; for tho' a Bailiff was slain it was by his own Procurement in doing an unlawful Act, in breaking the Window and Door, and attempting to enter and serve Proces, which is not lawful for a personal Duty,

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unless in the King's Case: And all the Judges delivered their Opinions, that as he killed him not in duly executing Process, it was not Murder, for in Murder there must be *Malitia præcogitata*, or *Malitia implicita*; as to murder one suddenly, or in Resistance of an Officer in duly executing his Office. Here the Bailiff was slain in doing an unlawful Act, he ought not to break open the House, for under Pretence of such Authority any one might enter; and every one is to defend his own House. But it is Manslaughter, because he seeing and knowing him, shot at him voluntarily, and slew him. *Cro. Car.* 538, 539.

10. Bailiffs broke open a House to execute their Process, and the Court would not grant an Attachment, but bid the Party bring his Action of Trespass. *6 Mod.* 105.

11. If a Window be open, and a Bailiff touches a Person's Hand either as he puts it out of the Window, or the Bailiff puts in his Hand and touches him, (he having a Warrant to take him) he is then his Prisoner, and he may justify breaking open the House to take him away. *1 Vent.* 306. *Farres.* 8.

12. *Cheshire* moved for an Attachment against *Broad* and others, for breaking

Inner  
Door.



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into a Room with Violence, &c. to arrest  
one *James Barry*, Esq; who then lay ill  
of a Fever. [*Holt*] It appears the Bai-  
liff found the Door open, and then he  
may open the inner Door; and tho' the  
Defendant was ill, I do not know that  
gives him any Protection. (2.) *Trin. 7.*  
*W. 3. B. R. Comb. 327.*

13. *Genner* a Bailiff having a Warrant What  
against *Sparks*, went to his House, and makes an  
finding him in his Yard, and being at Arrest.  
some Distance told him he had a War-  
rant, and said he arrested him; where-  
upon *Sparks* snatched up a Pitch-Fork,  
and kept the Bailiff from touching him,  
threatning to kill him if he came nearer;  
and retreated into his House, and shut  
the Door against the Bailiff. And *Con-*  
*yers* moved for an Attachment, suppo-  
sing it a Rescous, or at least a Contempt  
of the Writ. *Et per totam Curiam*, Here  
was no Arrest, the Bailiff having not laid  
his Hands on the Defendant; for his  
shewing the Warrant, and pronouncing the  
Word *Arrest* without touching him, was  
no more an Arrest, than it would be if a  
Bailiff sees a Man look out at a Window  
a Pair of Stairs or two high, and tells  
him he has a Writ against him, and says  
that he does arrest him; and therefore  
in such Cases the Bailiff cannot break  
E the



the House to come at the Person, as he could lawfully do had he been his Prisoner, and had escaped into a House from him. But it was agreed, If here he had but touched the Defendant even with the End of his Finger, it had been an Arrest, and he might have broke the House after to seise upon him, and an Attachment might go for the Rescous: As if a Bailiff have a Warrant against a Person who is in a House, and lays Hand upon him through the Window, he may after break the House to come to him. It was likewise agreed, that the Bailiff had the Protection of the Law; and therefore if he had ventured on here, and had been killed by the Defendant, it had been Murder in him; or if the Defendant had beat or had hurt him, he might have his Action: Or in this Case, if the Defendant were within Reach of the Bailiff when he pointed the Pitch-Fork at him, he might have his Action of Assault against him; so if he had presented a Gun at him at such a Distance as the Shot would reach him. *Trin. 3 Ann. B. R. 6 Mod. Rep. 174. 1 Salk. 79.*

Fees on an Arrest.

14. No Sheriff, Under-Sheriff, Bailiff of a Franchise, or other Bailiff shall take any Thing of any Person by him arrested or attached, nor of any other, for the sparing

## Chap. VII. In Civil Cases.

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sparing of any Arrest or Attachment of the Body; nor of any Person arrested or attached, for Fine, Fee, Suit of Prison, setting to Bail, or shewing any Ease or Favour, except for the Sheriff 20 *d.* the Bailiff which makes the Arrest or Attachment 4 *d.* and the Gaoler, if the Prisoner be committed, 4 *d.* on Forfeiture of treble Damages to the Party grieved, and 40 *l.* one Moiety to the King, and the other to the Prosecutor. Provided that the Warden of the *Fleet*, and of the Palace at *Westminster* shall not be damaged hereby. *Stat. 23 Hen. 6. c. 10.*

15. An Action of Debt was brought by a common Informer upon the *Stat. 23 Hen. 6.* against the Defendant, for taking 5 *s.* 6 *d.* for and Arrest on a Bond. There was a Verdict for the Plaintiff, and it was moved in Arrest of Judgment, for that by the Statute of King *James the First* all Offences committed against any penal Statute, for which any common Informer may have a popular Action, Bill, Plaint, Suit or Information, shall be prosecuted in the Counties where the Offence was committed, and not elsewhere. So it was adjudged in this Court in *Easter-Term 27 Car. 2.* between *Nicholes* and *Cockerill*; for if Debt will lie here by a common Informer upon a Penal Law,

then the Statute of King James the First will be wholly avoided. The Action was brought in London, and the Offence was committed in Buckinghamshire. *Adjournatur.* *Newenham v. Lunn, Trin. 8 W. 3. B. R. 5 Mod. 225.*

16. But in *Hick's Case Hill. 10 W. 3. B. R.* it was resolved, First, that 21 *Jac. 1.* restrains the Jurisdiction of the King's Bench in Actions of Debt by common Informers, and that they cannot bring Debt upon the Statute in *B. R.* unless the Cause of Action arise in the County where the King's Bench sits, but must in other Cases prosecute by Information, &c. before Justices of Assize, &c. as the Statute directs. Secondly, It was resolved, that where a Remedy is given by Action of Debt, &c. in any Court of Record, &c. by any later Statute subsequent to 21 *Jac. 1.* such Action not restrained; for the said Statute of 21 *Jac. 1.* does not extend to such Actions, but stands repealed as to them. But the Chief Justice declared, that his own private Opinion was, that where any subsequent Act gives any popular Action, it must be laid in the proper County, within the Equity of 21 *Jac. 1.* *Hale C. J.* was always against the Opinion of *Barns* and *Hughs*; and the principal Objection in

In that Case was, that the Party offending might get out of the County, and so escape the Punishment of the Law, as being out of their Jurisdiction: But by *Holt C. J.* this Objection does not hold, for there may be Process of Outlawry sued out against him: The Statute of 21 of *Jac. 1.* giving the Process that lay in Actions of Trespass *Vi Et Armis* at Common Law; and therefore neither Debt nor Information, tho' exhibited by the Attorney General, lieth here, but in *Yorkshire*, which is the proper County in this Case. *1 Salk. 373.*

17. If a Bailiff has a Warrant to arrest a Man, and another hinder him from doing it, there being no actual Arrest, it is not a Rescous, yet it is a Contempt of the Court. *Powell v. Ball, Trin. 3 Anne, B. R. 6 Mod. Rep. 210.*

Preventing Arrests.

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CHAP.

## C H A P. VIII.

*Of Treatment under Arrest, and  
in Gaol.*

1. **I**F any Under-Sheriff, Bailiff, Serjeant at Mace, or other Officer, shall have in his Custody any Person by Virtue of any Writ, Process, or other Warrant, it shall not be lawful for such Officer to carry such Person to any Tavern, Alehouse, or publick Victualling or Drinking-house, without the Consent of the Person, so as to charge such Prisoner for any Wine, Beer, Ale, Victuals, or other Things, but what he shall call for of his own Accord; and shall not demand or receive any greater Sum, than by Law ought to be taken for such Arrest; or waiting until such Person have procured an Appearance, found Bail, agreed with his Adversaries, or be sent to the proper Gaol, nor take any other Reward for keeping the Person out of Gaol, than what he shall freely give; nor take any other Sum for each Night's Lodging, or other Expences, than what is reasonable, or shall be so adjudged by the next Justice of the Peace, or at the next Quarter-Sessions; and shall not call the Person to pay for any other Wine, Beer, Ale, Victuals, Tobacco, or other Things, than



than what he shall freely call for. And every Under-Sheriff, Gaoler, and every Person to whose Custody any Person shall be committed, shall permit the said Person to send for Beer, Ale, Victuals and other Food, where they please; as also to have such Beddings or other Things, as they shall think fit, without detaining or paying for the same, nor shall receive of the said Persons any other Fees for their Commitments or Discharges, or for Chamber-Rent, than what is allowable by Law, until the same be settled by three Justices of Peace, whereof one to be of the *Quorum*, of each County, City and Town corporate; and for the City of *London* and Counties of *Middlesex* and *Surrey*, the two Lord Chief Justices and the Lord Chief Baron, or any two of them, and the Justices of the same in their several Jurisdictions. And the Lord Chief Justices, Lord Chief Baron and Justices of Peace, and all Commissioners for charitable Uses, shall use their best Endeavours to find out Gifts and Bequests for the Benefit of poor Prisoners for Debt; and send for any Deeds, Wills, Writings, and Books of Accounts, and any Persons concerned therein, and examine them upon Oath, to make true Discovery thereof, and the

same so found out to order in some way, that the Prisoners may not be defrauded. These Accounts of Gifts and Bequests bestowed upon the Prisoners for Debt, and the Rates of Fees, and the future Government of Prisons, shall be signed and confirmed by the Lord Chief Justices and Lord Chief Baron, or any two of them, and the Justices of Peace in *London, Middlesex and Surrey*, and by the Judges for the several Circuits, and Justices of Peace in their Precincts, and registred by every Clerk of the Peace; and no other Fees than shall be so established shall be demanded. And it shall not be lawful for any Sheriff or Gaoler, to lodge Prisoners for Debt and Felons together in one Room, but they shall be kept apart, upon Pain that they that shall offend against this Act shall forfeit their Office, and treble Damages to the Party grieved. *Stat. 22 & 23 Car. 2.*

2. And by a later Statute it is enacted,  
 “ That no Sheriff, Under-Sheriff, Bailiff,  
 “ Serjeant at Mace, or other Officer or  
 “ Minister whatsoever, shall at any Time  
 “ or Times hereafter convey or carry,  
 “ or cause to be conveyed or carried,  
 “ any Person or Persons by him or them  
 “ arrested, or being in his or their Custody,  
 “ by Virtue or Colour of any  
 “ Writ

" Writ, Process, or Warrant, to any  
 " Tavern, Ale-house, or other publick  
 " Victualling or Drinking-house, or to  
 " the private House of any such Officer  
 " or Minister, or of any Tenant or Re-  
 " lation of his, without the free and vo-  
 " luntary Consent of the Person or Per-  
 " sons so arrested, or in Custody; nor  
 " charge any such Person or Persons  
 " with any Sum of Money for any Wines,  
 " Beer, Ale, Victuals, Tobacco, or any  
 " other Liquor or Things whatsoever,  
 " save what he, she, or they shall call  
 " for, of his or her, or their own free  
 " Accord; nor shall cause or procure  
 " him, her, or them to call or pay for  
 " any such Liquor or Things, except  
 " what he, she, or they shall particular-  
 " ly or freely ask for; nor shall demand,  
 " take, or receive, or cause to be de-  
 " manded, taken, or received directly  
 " or indirectly, any other or greater Sum  
 " or Sums of Money, than is or shall be  
 " by Law allowed to be taken or de-  
 " manded for such Arrest, Taking, De-  
 " taining, or Waiting 'till the Person or  
 " Persons so arrested, or in Custody,  
 " shall have given an Appearance or  
 " or Bail, as the Case shall require, or  
 " agreed with the Person or Persons, at  
 " whose Suit or Prosecution he, she, or  
 " they

“ they shall be taken or arrested, or un-  
“ til he, she, or they shall be sent to  
“ the proper Gaol belonging to the  
“ County, City, Town or Place, where  
“ such Taking or Arresting shall be; nor  
“ shall exact or take any Reward, Gra-  
“ tuity, or Money, for keeping the Per-  
“ son or Persons so arrested, or in Cus-  
“ tody, out of Gaol or Prison; nor  
“ shall carry any such Person to any Gaol  
“ or Prison within four and twenty  
“ Hours from the Time of such Arrest,  
“ nor shall take or receive any other or  
“ greater Sum or Sums for one or more  
“ Nights Lodging, or for a Day's Diet,  
“ or other Expences, than what shall be  
“ allowed as reasonable in such Cases,  
“ by some Order or Orders to be made  
“ by the Justices of the Peace at some  
“ Quarter-Sessions to be held for such  
“ County, City, Town, or Place where  
“ such Arrest or Taking shall be, who  
“ are hereby authorised and required,  
“ with all convenient Expedition, to  
“ make some standing Order or Orders  
“ for ascertaining such Expences, with-  
“ in their respective Counties or Pre-  
“ cincts.” And every Sheriff, and other  
Persons intrusted with the Execution of  
Process, shall deliver a printed Copy of  
the said Cause to every Bailiff or Officer  
by



by them employed to execute Warrants, and when such Officer shall give Security upon his Entering into Office, shall require him to make it Part of the Condition, that he will deliver a Copy of the said Clause to every Person whom he shall arrest by Virtue of any Warrant, and carry to any House, and permit him or any Friend of his to read it, before any Liquor or Meat be called for; and in Case any Officer shall carry to any House any Person in his Custody, and permit any Liquor or Victuals to be called for, before such Clause be read to or by the Prisoner, such Neglect, besides the Breach of the Condition of such Security, shall be accounted a Misdemeanor in the Execution of the Process. Every Sheriff, Gaoler, &c. shall permit every Person so arrested to send for Beer or other Food from what Place they please, and also to have such Bedding or other Things as they shall think fit, without purloining or detaining the same, or requiring them to pay for the Using thereof, or putting any Difficulty upon them relating thereto. No Fee shall be taken by any Gaoler, &c. for any Prisoner's Commitment, Camber-Rent or Discharge, except what are now allowed by Law, 'till such Fees shall be settled by the Lord Chief Justice of



of the King's Bench, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, or any two of them, together with the Lord Mayor and two of the Aldermen, or with three of the Aldermen of *London*, in respect of Prisons within the said City, and by the said Lords Chief Justices and Lord Chief Baron, or any two of them, with three Justices of Peace for the Counties of *Middlesex* and *Surry*, in respect of the Prisons in the said Counties: And the Justices of Peace of every County for the Prisons in each County, &c. at the Quarter-Sessions, are required to settle the same; and Tables shall be made of the Fees, and signed by the Lords Chief Justices, &c. and Justices of Peace of *Middlesex* and *Surry*; and the Tables of Fees, in respect of the rest of the Gaols, shall be signed by three Justices of the Peace attending at the Settlement of the same, and shall be reviewed and confirmed, or moderated, and then signed by the Judges of Assize, together with three Justices; and also Rules and Orders for the better Government of Prisons shall be made, and from Time to Time enlarged and amended by the Courts in *Westminster-Hall*, in respect of the Prisons belonging to the said Courts,

as

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as by the Lords Chief Justices, &c. with the Lord Mayor and two Aldermen, &c. in respect of the Gaols and Prisons within the City; and by the Lords Chief Justices, &c. with three Justices of Peace, &c. in respect of the Prisons within *Middlesex* and *Surry*, and by the Judges of Assize, or one of them, and three Justices of Peace of each County, &c. in respect of the Gaols within their Circuits, &c. and Duplicates of such Tables of Fees and Rules shall be made and signed, and transmitted to the Courts of King's Bench, Common Pleas, and Exchequer, to be inrolled; and such of them as relate to Gaols in each County, &c. shall be registered by the Clerk of the Peace without Fee, and hung up in some publick Room in every Gaol, and be resorted to by every Prisoner; and after such Tables of Fees are settled and confirmed, no Gaoler, &c. shall demand or take of any Prisoner for Debt any other Fee for his Commitment, Chamber-Rent or Discharge, than what shall be allowed in such Table of Fees. The Courts at *Westminster* shall every *Michaelmas Term* appoint some Day to inquire whether such Tables of Fees and Rules be hung up in the several Prisons, and whether the same be observed; and cause eight Days  
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Notice to be given to the Prisoners of the Time appointed for such Inquiry, and shall redress whatever they find neglected; and the Judges and Justices of Assize and Gaol-Delivery, shall make Enquiry of the Matters aforesaid, at all Assizes and Sessions of Gaol-Delivery, in respect of the Gaols within their Jurisdictions, and shall give in Charge to the Grand Jury, to inquire concerning the same. Upon the Petition of any Prisoner, complaining of any Exaction by any Gaoler, &c. to any of his Majesty's Courts in *Westminster-Hall*, from whence such Process issued, or under whose Power such Prison is, in the Term-Time, or to any of the Justices or Barons of such Court in the Vacation, or to the Judges of Assize in their Circuits, it shall be lawful for the Court, &c. to hear and determine the same in a summary way, and to make such Order for redressing such Abuse, and punishing such Officer, and making Reparation to the Party injured, as they shall think just, together with the Costs of such Complaint; and such Orders made by the said Courts or any of the said Justices, &c. shall have the same Effect as any Order of the said Courts, and may be enforced by Attachments under the Seal of the Courts, by  
Di-

Direction of the Justices, &c. making such Order. The Lords Chief Justices, &c. and all Commissioners for charitable Uses, shall do their best Endeavours to discover the Gifts and Bequests given for the Benefit of poor Prisoners, and may send for any Wills, Writings and Books of Account, and any Persons concerned therein, and examine them upon Oath, and settle the Payment thereof; and Lists of such Gifts, &c. shall be hung up in some open Room of the Prison, to which the Prisoner may have Resort without Fee, and shall be registred by the Clerks of the Peace. *Per Stat. 2 Geo. 2. c. 22.*

3. No Bailiff or Sheriff's Officer shall presume to exact or take from any Person, being in Custody by Arrest, any Warrant to acknowledge Judgment, but in the Presence of an Attorney for the Defendant, which Attorney shall then subscribe his Name thereunto, which said Warrant shall be produced when the said Judgment shall be acknowledged; any Bailiff or Officer offending, to be severely punished. And no Attorney shall enter up Judgment on a Warrant of Attorney gotten from any Defendant under an Arrest, otherwise than as aforesaid. *Reg. Cur. Pas. 15 Car. 2.*

Of taking  
a Warrant  
of Attor-  
ney.



Rules for  
the Go-  
vernment  
of the K.'s  
Bench Pri-  
son.

Misbeha-  
vior.

Strict Con-  
finement.

Escape.

Habeas  
Corpus.

Removal  
from the  
Common  
Side to the  
Master's.

4. The following Rules made pursuant to the *Stat. 2 Geo. 2. For the Relief of Debtors with respect to the Imprisonment of their Persons*, are to be strictly observed by the Marshal and his Officers, and all the Prisoners; and this and the following Rules are to be fixed in the most public Place in the aforesaid Prison, for the Inspection of the said Prisoners.

1. The Marshal to cause a Pair of Stocks to be kept up in the Prison, for the Punishment of such as blaspheme the Name of God, swear, or misbehave themselves. 2. The Marshal shall not use any illegal Means of Confinement of any Prisoner on any Pretence; not to confine any in the Hole or Strong-Room, or other unusual Place of Restraint, nor use any other extraordinary Means of Confinement, unless the Prisoner has been found actually attempting to break the Prison, with an Intent to escape; and if so confined, may appeal to Court in *Term*, or to a Judge in the Vacation for Redress. 3. The Marshal is not to sue, or procure to be sued out, any *Habeas Corpus* to remove any Person from the King's Bench Prison to the *Fleet*. 4. The Marshal is not to turn any Prisoner back from the Common Side to the Master's Side, without reasonable Cause, giving



giving such Prisoner three Days Notice of his Intention to remove him, during which Time the Prisoner may appeal to a Judge to prevent the same: And pending which Appeal the Prisoner to be allowed his daily Subsistence as before; and his Share of the Dividend, and other Advantages to be reserved 'till it be determined. 5. If any Prisoner die in the said Prison, the Marshal forthwith to give Notice to the Coroner, that he inquire how such Prisoner came by his Death. 6. The Marshal to take Care that no Garnish, or other Exaction be extorted from any of his Prisoners, and that none be deprived of his Share, Dues and Dividends, on any Pretence. 7. The Marshal to take Care that the Prisoners may have any Beer, Ale, Victuals, or other necessary Food, from what Place they please; and have and use such Bedding, Linen, and other Things, as they think fit, without purloining or detaining the same, or inforcing them to pay for the using them, or put any Restraint upon them in Relation thereto. 8. The Marshal to cause a Table of Fees settled according to the aforesaid Statute, these Rules, and a List of all Gifts and Legacies to be hung up in some publick Place in the said Prison, to be resorted to by the

Death of Prisoners.

Garnish.

Provisions.

Fees.

Escapes.

Treat-  
ment.Fees, &c.  
Rent, &c.Admit-  
tance of  
Strangers.

Charities.

Chapel.

Stocks.

Dining-  
Room.

the Prisoners, without Fee or Reward.

9. The Marshal to endeavour by legal Means to prevent Escapes, and he and his Officers to treat the Prisoners with the utmost Tendernefs and Humanity, as far as consistent with the safe Custody of them; and neither the Marshal nor any employed by him, to take from any Prisoner for Debt, more for Commitment, Chamber-Rent, Release or Discharge, than allowed in the aforesaid List of Fees. 10. The Turnkey diligently to attend the Gate or Door, and admit such Persons to any of the Prisoners, as by Law are intitled thereto. 11. No

Cellarman, Turnkey, or other Officer or Servant of the Marshal, to have any Share of the Charities, or bear any Office which may intitle him in the Disposition or Receipt thereof. 12. The Chapel to be kept in good Repair, and the Chaplain to attend to perform the Divine Service, and administer the Sacrament at the usual Times of the Church of *England*. 13.

No Prisoner to wrong another, on Pain of being set in the Stocks for such Time as the Marshal, with the Consent of the Steward and Assigants, or any two of them think proper. 14. The

Dining-Room to be kept in Repair, for the Prisoners to exercise Devotion or

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Conversation, and a Fire kept therein as the Season requires; and the two Rooms under it to be for the Use of such as are afflicted with any Disease or Infirmary, that may require such Accommodation.

15. Every Prisoner who shall make Oath before a Judge, a Commissioner, or a Justice of Peace for the County of Surrey, that he cannot command 5 l. and cannot subsist without the Charities belonging to the Common Side, shall immediately be admitted to the Common Side, and be capable of being elected into all Offices and intitled to all Shares, Dividends and Profits belonging to the same. 16. Criminals.

No Person committed for criminal Matter to have a Vote or Suffrage in electing a Steward or other Officer of the Common Side, nor to receive any Share of the Charities, other than his Share of the Profits arising from the Baskets. 17. Every Prisoner to lodge in a Cabin within the Ward to which he belongs, without Fee or Reward. 18. Every Prisoner to be capable of being chosen in his Turn an Assistant, and be intitled to such Allowances and Advantages as have been customary.

19. The Seal of the Common Side to be kept by the Master of the King's Bench Office, and not to be affixed to any Receipt or other Instrument, 'til approved and

**Superse-  
deas.**

**Sickness.**

**Fees.**

**Dividend.**

and signed by the Marshal, with the Consent of the Prisoners of the Common Side, signified under the Hand of the said Steward and Assistants. 20. If any Prisoner on the Common Side be charged with one Action, and it be supersedeable, the same to be superseded with the Money belonging to the Prisoners of the Common Side, by their Consent, signified under the Hands of their Stewards and Assistants, and signified by the Marshal; but if charged with more than one Action, not to be superseded with such Money, unless by Order obtained on Application to the Court in Term Time, or to a Judge in the Vacation. And no Judge's Clerk to take any Fee in any Matter relating thereto. 21. Particular Care to be taken of Prisoners on the Common Side, when sick, Necessaries provided by the Steward and Assistants, and they to be re-imbursed out of the County-Money. 22. Debts reasonably contracted by the Steward and Assistants, with the Concurrence of the Marshal, and the Master of the King's Bench Office, for the necessary Support of poor Prisoners, to be entred by the Steward and Assistants in their House-Books, and to be repaid out of the next Dividend. 23. No Money to be



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be allowed the Steward and Assistants for sitting on House-Business, or adjusting Differences between Prisoner and Prisoner. 24. Any Prisoner that comes into Prison, after the first Day of *Easter-Term*, to have but one Quarter of *Midsummer* Dividend. 25. The Money brought to the Prison by the Basket-Men, and their Boxes, and the Boxes which come in at *Christmas*, *Easter*, and *Whitsuntide* to be immediately divided to each Prisoner, making the Basket-Men such reasonable Satisfaction for their Trouble, as has been usually allowed. 26. In Case the Marshal in Aid of the Steward and Assistants, advance any Money for superseding any Action against any Prisoner as before directed, he shall be re-imburshed out of the next County-Money. 27. Prisoners of the Common Side have Power to make an Election of a Steward every Year; no Prisoner who hath the Liberty of the Rules, or Liberty to go out of the Walls of the Prison, to have a Vote for Steward, or other Officer of the Common Side. The Steward to continue in his Office a Year, unless removed upon Application to the Court in Term, or a Judge in the Vacation. 28. Steward of the Common Side to keep a Register-Book of the Fees aforesaid, and

Basket-men.

Superse-  
deas.

Election of  
Steward.

Register.



Wrongs.

Waste of  
Money.

Orders to  
be read.

and these Rules, and of the Charities which the said Prisoners may inspect, and the Steward's Accounts. 29. If any Prisoner be wronged or abused by the Steward and Assistants, on complaining to the Court in Term, or in a Vacation to a Judge, or to the Marshal (on Proof thereof) to have Allowance for Costs and Charges, to be paid out of the next Dividends belonging to the Steward and Assistants, or such of them who have wronged the Person complaining; or if the Complaint prove groundless, the Complainant to make Satisfaction out of his Share of the next Dividend. 30. If any of the Assistants or Steward mispend or waste the House-Money, the next Assistants, or any succeeding them, may call the former to Account for the same; and on Proof of Money mispent call all Dividends, as well at the Grate as otherwise, to be taken, stopp'd, and kept for Reparation, and to be put into the House-Box till divided to each Prisoner. 31. The Steward and Assistants to cause these Orders to be read every third Monday at the first Basket, being the usual Day for chusing the Officers, and settling the House-Accounts. 32. The Marshal, his Officers and Servants, and the Prisoners, to keep these Orders, under the

Penalty

Penalty of the utmost Punishment that by Law can be justly inflicted on them.

33. No Clerk, Officer, or Servant being Gratiuity. long to any Judge of the Court, to take any Gratiuity by Reason of any Petition, Complaint, or Application made to any Judge by any of the said Prisoners, pursuant to these Orders. *Reg. Cur. Mic.* 3 *Geo. 2. B. R.*

5. All the Orders or Rules hereunder Rules for written, established pursuant to the *Stat. the Well-* 2 *Geo. 2. intitled, An Act for the Relief govern-* of Debtors with Respect to the Imprison- ment of the Fleet-] ment of their Persons, to be kept as well Prison.

by the Warden and his Officers, and Servants, as by all the Prisoners. And this Rule with the Rules aforesaid to be fixed up in the Hall of the Prison, for the Use and Inspection of the Prisoners.

1. The Warden or Deputy, to appoint Servants. so many of the Household-Servants, as to either of them shall seem good, to open and shut the two outer Gates at such Hours as the Gates of Ludgate and Newgate, and the said Persons to carry Halbert, Bills, or other Weapons, as shall seem good unto the Warden or Deputy.

2. The Warden or Deputy to take Or- Arms. der, that no Person carry any Weapon further than the Porter's Lodge, unless licensed to keep the Gate.

3. The Watch. War-

Warden or Deputy, and so many of the Household as needful, to keep Watch in Harness or otherwise, at all Times as he shall see Cause for his Safe-Guard.

Poor's Box. 4. The Warden to order the Money gathered at the Box, or otherwise given for the Distribution amongst them, if any Contention arise; the poor Men shall keep one Key, and the other to be at the Warden's Appointment. 5. If the

Rent.

Prisoners on the Master's Side refuse, or be not able to pay Chamber-Rent, then the Warden may turn them out into the Wards, but no Prisoner to be confined for Non-Payment of Chamber-Rent, but all to have Liberty of walking in the Fore-Yard, Hall, and Cellar in the Day-Time; the Ward's Gate in the Day-Time to stand open, and to be opened at Five in the Morning in Summer, and Seven in the Winter. And the Warden

Gate.

may shut the Ward-Gates at Nine at Night in the Winter, and Ten in Summer, provided he keep a Watch to attend to let out and in such as have Occasion to go to the necessary House.

Fees.

6. The Warden not to detain or imbezill any Prisoner's Goods, but may detain his Person after discharged by his Creditors, 'till the Fees be paid. 7. The

Dungeon.

Warden to provide a Dungeon for Per-

## Chap. VIII. In Civil Cases.

ons that endeavour to escape, or are guilty of other great Misdemeanor. (*And after being informed that such a Room was provided, for a further Regulation ordered, that,*) 8. The Warden do keep the Chapel in Repair, and take Care that Divine Service be performed, according to the Use of the Church of England, and all Prisoners to attend, and not be absent without reasonable Cause. 9. And no Chaplain of the Fleet, or any Clergyman, being a Prisoner within the Walls or Rules, to presume to marry any Person without License, and the Warden and Officers to use their utmost Diligence to prevent such Marriages. 10. The Warden to cause the Stocks to keep up, for the Punishment of such Prisoners as blaspheme, swear, or behave themselves disorderly. 11. No Prisoner to take Possession of any Chamber, but with Consent of the Warden or Deputy, or pull down any Partition, or make any material Alteration, without the Consent of the Warden or Deputy, but the Disposal of the Rooms to be in the Warden or Deputy, yet so as neither of them turn any out of Possession without Cause, and Prisoners on Discharge to deliver to the Warden, his Deputy or Chamberlain, the Key of his Chamber, and all the



- Warden's Furniture therein. 12. The Warden or Deputy may turn any out of his Chamber to the Common Side, the
- Rent. refuse or neglect to pay Chamber-Rent for three Months; and the Warden or Deputy shall in such Case take an Inventory of the Prisoner's Goods and Effects (if any) signed by two Witnesses, and deliver them to such Prisoner, but the Warden may still detain the Prisoner tho' discharged by the Plainriff, or in any other Manner, until his Arrears of Chamber-Rent be paid. 13. No Person shall keep any publick Room within the Prison for selling Victuals or Liguors, without Leave from the Warden or his Deputy; Offender may be turned to the Common Side, and the Warden and Deputy to take Care that good Order be kept in such Publick Room as shall be allowed, as aforesaid. 14. The Warden to take Care that every Prisoner committed to his Custody, be conveyed to the Fleet, without being carried to any publick House, or the private House of a Tipstaff, Officer or Minister of the Fleet, or of any Tenant or Relation of his, without the free Consent of the Person in Custody, and no Garnish shall be exacted by any Prisoner from any Person committed, 15. The Warden to cause a Table
- Victuals and Liguors.
- Spunging-House.
- Garnish.
- Gifts.



Table of Gifts, expressing the Purposes which given to be fairly writ, and hanging up in the Hall, and to take Care that no Prisoner be deprived of his Share of the Charities, or bear any Office which Charities: may entitle him to the Receipt or Disposition thereof. 16. Every Prisoner who shall make Oath before one of the Judges of the Court from whence the Process issued upon which he is taken or charged, before a Commissioner impowered by that Court, that he is not worth 5 *l.* cannot subsist without the Charities belonging to the Prisoners of the Fleet, shall immediately be admitted to all Acres, Dividends, and Profits arising from such Charities. 17. Two Rooms Infirmaries; marked 9 and 10 up the Chapel-Stairs, shall be kept as an Infirmary for the Prisoners on the Common Side, who fall of such Diseases as require their being removed, and no Prisoner shall be oblig'd to lie in the same Bed with a diseased Prisoner. 18. The Warden shall keep the Repairs; Kitchens, Bog-Houses and Dunghill as clean and free from Nuisances as possible. 19. When any Prisoner dies within Death. Prison, the Warden shall forthwith give Notice thereof to the Coroner, that he may inquire how he came by his Death; and the Warden shall detain the

Habeas  
Corpus.

Commit-  
ment-  
Book.

Tipstaff's  
Book.

Declarati-  
on Book.

Book of  
Dischar-  
ges.

Body no longer than the Coroner's Inquest have made their Inquisition, which shall be done with all convenient Speed and immediately after the dead Body shall be delivered to the Prisoner's Friends or Relations, if they desire it, without Fee or Reward. 20. The Warden not to sue out any *Habeas Corpus* to remove any Prisoner from the *Fleet* to the King's Bench Prison. 21. The Warden shall keep a Book in which Commitments shall be entred (*verbatim*) within 14 Days after Prisoner committed. 22. The Warden another Book of the Names of every Prisoner, at whose Suit, and the Time when brought to the *Fleet*, and the Court or Judge whereby committed. 23. Every Tipstaff, to whom any Prisoner shall be delivered at the Judge's Chamber shall keep a Book containing the Name of such Prisoner, the Time when taken into Custody, to be signed by such Judge's Clerk, who is to keep another Book to be signed by the Tipstaff. 24. The Warden shall keep a Book of Declarations delivered to the Turnkey containing the Names of the Parties, the Cause of Action, and the Time when delivered. 25. The Warden shall keep a Book of Discharges, specifying how made, whether by the Plaintiffs, by

persecuted, or otherwise; which Entry shall be made within 5 Days after every Discharge. 26. The Warden shall keep a Book of every *Habeas Corpus* upon which the Prisoner shall not be committed, or the Custody altered, with the Return of such *Habeas Corpus*. 27. All the Books before mentioned, except the Tipstaff's, shall be kept in the publick Office of the Clerk of the Papers; and all Persons may resort to them and take Copies. 28. No Clerk, Officer, or Servant, belonging to any Judge of this Court, shall take any Fee for any Petition, Complaint, or Application made by any Prisoner, founded upon these Rules, or concerning any Mis-government in the Fleet. 29. Last-ly, the Warden and his Officers to treat the Prisoners with all Tenderness and Humanity, and the Prisoners to behave themselves towards the Warden with that submission and Regard which the Law requires. *Reg. Cur. Hill. 3 Geo. 2.*

Book of  
Habeas  
Corpus.

Books  
where  
kept.

Fees.

Treat-  
ment.

6. A Table of Fees to be taken by the Warden of the Fleet for Commitments, or Coming into Gaol or Chamber-Rent here, or Discharge from thence in any Civil Action, settled and established the 9th of Jan. 3 Geo. 2. pursuant to an Act for the Relief of Debtors in respect to the Imprisonment of their Persons.

Fees.

On Com-  
mitment.

Every Prisoner charged with one or more Actions (who at his own Desire shall go on the Master's Side) to pay the Warden for Commitment, 1 l. 6 s. 8 d.

Every Prisoner charged with one or more Actions (who shall go on the Common Side) not being intitled to partake of the Poor's Box, 13 s. 4 d.

Every Prisoner intitled to partake of the Poor's Box, 0 l. 0 s. 0 d.

Discharge.

Every Prisoner to pay for his Discharge, 7 s. 4 d.

Chamber-  
Rent.

Every Prisoner on the Master's Side, who at his own Desire shall have a Bed to himself, to pay for Chamber-Room, Use of Bed and Bedding, and Sheets to the Warden, per Week, 2 s. 6 d.

If two in a Bed, and no more, for Chamber-Room, Use of Bed, Bedding and Sheets, each to pay the Warden, per Week, 1 s. 3 d.

If the Prisoner finds his own Bed, Bedding and Sheets; (which the Warden is not to hinder him of) to the Warden, per Week, 1 s. 3 d.



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Two Prisoners in one Bed, finding their own Bed, Bedding, and Sheets, when each of them *per Week*, 7 *d.* Half-penny.

Prisoner not being intitled to partake of the Poor's Box, to pay the Turnkey on Commitment, 2 *s.*

Prisoner on Commitment upon a Surrender at the Judge's Chambers, to pay to the Tipstaff, 6 *s.* 8 *d.*

Prisoner on Commitment on *Habeas Corpus*, at a Judge's Chambers, to the Tipstaff, 4 *s.* 2 *d.*

On Commitment in Court, to the Tipstaff, 7 *s.* 6 *d.*

No other Fees for any Prisoner for the Use of Chamber, Bed, and Bedding, or Sheets, or upon Commitment, or Discharge of any Prisoner intitled to partake of the Poor's Box, nor any Chamber-Rent to be taken of any Prisoner on the Common Side.

## C H A P. IX.

## Of Bail.

By whom  
Bail must  
be taken.

1. **W**HEN a Sheriff, Coroner, &c. has arrested any Person by Mesne Process, he is not only authorized to take Bail for the Defendant's Appearance at the Return of the Writ, but he is also obliged to do it, otherwise an Action on the Case may be brought against him, For

2. The Stat. 23 Hen. 6. c. 10. enacts, that Sheriffs, Under-Sheriffs, &c. shall let out of Prison all Persons in their Custody by Force of any Writ, Bill or Warrant, in any personal Action, or by Cause of Indictment of Trespass, upon reasonable Surety of Persons having sufficient within the Counties, to keep their Days (Persons in Ward by Redemption, Execution, *Capias utlagatum* or Excommunication, Surety of the Peace, and all Persons committed by special Commandment of any Justices excepted). And no Sheriff, or his Officers, shall take any Obligation for any Cause aforesaid, or by Colour of his Office, and upon Condition written, that the said Prisoners shall

shall appear at the Day contained in the Writ, Bill, or Warrant; and if any Sheriff or Officer take any Obligation in other Form by Colour of their Offices, it shall be void; and he shall take no more for the Making of such Obligation, Warrant, or Precept, than 4 *d.* Offenders against this Act shall forfeit treble Damages to the Party grieved, and 40*l.* one Moiety to the King, and the other to him that will sue.

3. Yet notwithstanding the Sheriff, &c. is obliged to take Bail, if the Plaintiff does not like the Securities, and does not accept of an Assignment of the Bail-Bond, the Plaintiff may call on the Sheriff for a Return of the Writ.

4. And the Sheriff is obliged to return a *Cepi Corpus*, otherwise the Court on Motion will amerce him. 1 *Vent.* 86. 1 *Salk.* 99. 1 *Mod.* 33.

5. And if the Sheriff returns *Cepi Corpus*, and does not bring in the Body, he shall only be amerced, and is not liable to an Attachment as in Case he does not return the Writ, because he is obliged to bail the Defendant; and therefore if he is mistaken in his Sureties, he is not to suffer in his Liberty, but the Returning of the Writ is in his Power, tho' the Bringing his Body, which he was oblig'd

to let to Bail, may not be *Cro. Eliz. 852.*

*Noy 39. 1 Bac. Abr. 206.*

6. But the Sheriff is not to be amerced,

If the Plaintiff has taken an Assignment

of the Bail-Bond; for by accepting of

the Bond, the Plaintiff waives the Be-

nefit of amercing the Sheriff, and he may

sue the Sureties in his own Name as As-

signee of the Sheriff. *6 Mod. 122. 1 Salk. 99.*

7. If any Person shall be arrested by

Process out of the Courts at *Westminster*

at the Suit of a common Person, and the

Sheriff or Officer takes Bail for the De-

fendant's Appearance, the Sheriff, &c. at

the Request and Costs of the Plaintiff or

his Attorney, shall assign to the Plaintiff

the Bail-Bond, by indorsing the same

and attesting it under his Hand and Seal

in the Presence of two Witnesses, with-

out Stamp, provided the Assignment be

stampt before the Action brought there-

in. And if the Security be forfeited, the

Plaintiff after Assignment may bring an

Action thereupon in his own Name, and

the Court may by Rule give such Relief

to the Plaintiff and Defendant in the

original Action, and to the Bail, upon

the Security, as is agreeable to Justice;

and such Rules of Court shall be in Na-

ture of a Defeasance to such Bail-Bond.

*Stat. 4 & 5 Anne, c. 16.*

8. The



8. The Judges of the King's Bench and of the Common Pleas, or any two of them respectively, whereof the Chief Justice to be one; and the Barons of the Exchequer, or any two of them, whereof the Chief Baron to be one, may, by Commissions under the Seals of the respective Courts, impower Persons, other than Attornies and Solicitors, in all the Counties of *England* and *Wales*, and Town of *Berwick*, to take Recognisance of Bails in Actions depending in the said Courts, in Manner as the said Justices and Barons have used to take the same; which Recognisance shall be transmitted to some of the Justices or Barons; who, upon Affidavit of the due Taking, shall receive the same, upon Payment of usual Fees; which Recognisance shall be of like Effect, as if it were taken *de bene esse* before any of the said Justices or Barons; for taking of which Recognisances the Persons impowered shall receive 2 s. And any Judge of Assize may take such Recognisance, which shall be received without Oath, upon Payment of usual Fees. And all who shall personate others before any Commissioners, &c. empowered to take Bail, shall be adjudged Felons. *Stat. 4 & 5 Will. & M.*

c. 4.

9. In an Action of Trespafs for Battery, Wounding and Imprisonment, the Defendant as to the Wounding pleads Not guilty; and as to the Battery and Imprisonment justifies, because, being a Serjeant of the Mace in London, by Custom there, upon a Plaint of Debt entered in any of the Counters against a Person, he may arrest him against whom such Plaint is entred, and carry him to Prison, until he find Bail, and justifies by Reason of a Plaint entered, &c. The Plaintiff replies, that after the Arrest he tendred unto him sufficient Bail, to wit, *J. S.* and *J. D.* and notwithstanding he detained him in Prison, &c. *And of this, &c.* The Defendant takes Issue, that he did not tender him Bail; and it was found against him for both Issues, and entire Damages given. And it was moved in Arrest of Judgment, that having justified the Arrest and Imprisonment, the Tender of Bail is not material; for he is not the Party who ought to accept of Bail, but the Judge in Court; therefore the Issue as to this Point is frivolous: And altho' *Germain* for the Plaintiff objected, that because he refused to take Bail, he was a Trespasser *ab initio*, as he who enters into a Tavern and takes a Cup away, or where Tenant at Will pulls

pulls down the House: Yet all the Court conceived, that when he justifies the Arrest and Imprisonment, altho' he might have accepted Bail (which they all agreed he could not) and refused, that doth not make the Arrest and Imprisonment tortious, to have Trespass; but he might upon the Matter have had an Action upon the Case for detaining him in Prison, after Bail tendred, then when Damages are given as well for the Battery and Imprisonment, as for the Wounding, the Plaintiff ought not to recover; whereupon it was adjudged for the Defendant.

*Trin. 6 Car. 2. B. R. Salmon v. Percivall.*  
*Cro. Car. 196.*

10. And in a Bill of Debt upon *Stat. 23 H. 6.* Plaintiff declared, that whereas *Anthony Wolley 27 Eliz.* had sued in the Court of *Nottingham*, before the Defendant, then Mayor, and *J. S.* and *J. D.* Sheriffs there, according to the Custom of the said Town, a Plaint of Trespass on the Case against *A.* the Plaintiff, upon which a *Capias* was awarded to *O. B.* Serjeant and Officer of the said Court, to take the said Plaintiff, and have his Body before them at the next Court, to answer, &c. And that afterwards *O. B.* arrested him, and committed him to the Prison of *Nottingham*, under the Custody  
of

of the Mayor, and that he being in Prison offered to the said Mayor Sureties to appear, which he refused, and kept him in Prison until, &c. Defendant pleads *Nil debet*, and it was found against him. And now moved in Arrest of Judgment, that the Action does not lie against the Mayor, for the Sureties were not to be offered unto him, but to the Serjeant; for the Mayor was Judge to award the Process, and cannot be an Officer to himself to take Bail. Also the Warrant is, that he shall take his Body, and keep him 'till the next Court, viz. first of September. and so 'till that Day is come he is in the Custody of the Serjeant, in whatsoever Prison he is committed. Also the Surety offered is not according to the Statute; for it is, that he shall appear *ad respondendum*, whereas it is only for his Appearance, and not for his Answer; *Sed non allocatur*; for it was held clearly, that the Plaintiff is to recover, for the Serjeant is but the inferior Officer; and although the Mayor is Judge in some Respects, yet he may be an Officer for keeping the Gaol; and here he is not only the Judge but the Sheriff also, and the Plaintiff being in Prison under him, it is proper to offer Sureties to him; and so is the common Course in London,

upon



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III

upon the Plaint before the Sheriffs, and a Precept to the Serjeants to arrest one, the Sureties shall be found and offered to the Sheriffs. 9 Hen. 6. 19. And when the Party is brought to the Gaol he is under the Mayor's Custody, and not the Serjeant's. And they held clearly, that the Surety offered was according to the Statute, and commanded Judgment to be entred accordingly, but it was stayed 'till the next Day; and then *Walmesley* Serjeant said, that the Action is not well brought, for the Stat. 18 Eliz. c. 5. is, that no Action shall be brought but by Information or Original Action, and not otherwise, and this is by Bill of Debt. *Coke*, This is the proper Original Action in this Court, and so within the Stat. 2 R. 3. 17. 27 H. 6. 5. Also the Stat. of 18 Eliz. is to redress Disorders in common Informers, but here he that sueth is the Party grieved. But the Court held it will be hard to maintain this Action to be sued here, for the Statute is in the Negative, that it shall not be sued otherwise, which doth not refer to any Person. And in *Easter Term* after it was adjudged for the Defendant, and it cannot be helped by Stat. 18 Eliz. of *Jeofaile*; for this is not Matter of Form, but Substance, by misconceiving the

the Action. *Mic. 29 & 30 Eliz. B. R. G. briel Widow v. Peter Clerke. Cro. Eliz. 76.*

Where  
special or  
common  
Bail requi-  
red.

11. After Judgment, the Plaintiff having ascertained his Right and proved his Demand, the Defendant must pay the Condemnation-Money; for which Purpose a Writ of Execution issues, to which no Bail can be taken. *See before, Chap. 1.*

12. In all Cases of Removal of Causes, be it *Habeas Corpus*, Privilege, or *Certiorari* out of inferior Courts, special Bail is required, tho' the Sum for which the Defendant was sued be under 10 *l.*; so that the Plaintiff may not be in a worse Condition than he was in the Court below; and the Reason hereof is, that those inferior Jurisdictions being confined, they cannot follow the Debt out of their own Jurisdiction; and therefore it is requisite that they should be Bail who live within their Precincts.

13. But if the Cause appears to be vexatious, or such as requires no Bail, as an Action against an Executor, they would discharge the Defendant upon common Bail. *1 Salk 101.*

14. If the Plaintiff in the Action sue upon the Bail-Bond, he cannot refuse the same Persons to be Bail to the Original

ginal Action; but if the Plaintiff proceed against the Sheriff by Amerciaments, he is not compellable to accept those Persons that are Sureties to the Sheriff to be Bail to his Action: So if a Cause be removed by *Habeas Corpus* out of the *Marshalsea* or any other inferior Court, and the Bail there offer to be Bail to the Action here, the Plaintiff is compellable to take them, because he might, but did not except against them below. But it is otherwise where a Cause comes hither out of *London*; for the Sufficiency of the Bail there is at the Peril of the Clerk, and he is responsible to the Plaintiff; so that the Plaintiff had not Liberty of excepting against them; and the Clerk is not responsible if they be deficient in this Court, though he was in *London*. *Per Holt C. J. Mic. 11 W. 3. B. R. 1 Salk. 97.*

15. If a Cause is removed out of an inferior Court by *Habeas Corpus*, and new Bail found, and after in the same Term it is remanded by *Procedendo*, the old Bail shall stand; for when a Cause is remanded, the same Term in which it was removed, no Record is made thereof; but it is otherwise where remanded in another Term. *Cro. Jac. 363. Moor 836.*

16. No

Who may  
not be Bail.

16. No Attorney of the Common Pleas, nor any Person practising as such, shall be Bail in any Suit depending in the said Court; nor no Sheriff's Officer, Bailiff or other Person concerned in the Execution of Process, shall be permitted to be Bail in any Action in the said Court. *Per Reg. Cur. C. B. Mic. 6 Geo. 2.*

Of putting  
in Bail.

17. In the *King's Bench*, where the Defendant is arrested in *London* or *Middlesex*, and shall give a Bond for his Appearance, he hath Leave for four Days after the Return of the Writ to put in Special Bail; and where he is arrested in any other County, he hath 6 Days after the Return. *Per Reg. Cur. Mic. 8 Anna.* These Days are reckoned exclusive of the Appearance-Day.

Notice of  
it.

18. And every Attorney who puts in Special Bail before a Judge, *de bene esse*, on a *Capi Corpus*, shall forthwith give Notice thereof to the Plaintiff's Attorney. *Per Reg. Cur. Mic. 16 Car. 2. B. R.*

19. And the Defendant's Attorney shall give Notice to the Plaintiff's Attorney of the taking Bail before Commissioners in the Country, within four Days after the Taking thereof. *Per Reg. Cur. Mic. 13 Geo. 1. C. B.*

20. If the Bail be taken before a Commissioner in the Country, an Affidavit

20. If



vit thereof must be made either before a Judge of the Court to whom such Bail shall be transmitted, or before some Person authorized to take Affidavits in that Court. *Per Reg. Cur. Trin. 4 W. & M. B. R.* The same in C. B. *Per Reg. Cur. Easter 5 W. & M.*

21. All Bails taken before Commissioners within the Distance of 40 Miles from London and Westminster, shall be transmitted to one of the Judges, within 8 Days after the Taking thereof; and if above the Distance of 40 Miles, it shall be transmitted within 15 Days after the Taking thereof, unless all the Judges be in their Circuits, and then as soon as any one of them is returned to his Chambers. *Per Reg. Cur. Trin. 4 W. & M. King's Bench.*

22. But in the Common Pleas, if taken before any Commissioner within 40 Miles from London and Westminster, it must be transmitted within ten Days after the Taking of it; and if taken above forty Miles within 20 Days, unless the Judges be in their Circuits, and then as soon as any of them return to London. *Per Reg. Cur. Pas. 5 W. & M. & Hil. 6 Geo. 1.*

23. If the Plaintiff thinks fit to except against the Bail put in before a Judge, he

he must do it within 20 Days after Notice given of its being put in, or else the Exception is void. *Per Reg. Cur. Mic. 16 Car. 2. & Mic. 8 Annæ, B. R.*

24. And if taken before a Commissioner, Bail may be excepted against within 20 Days after it is transmitted, and Notice given of the Taking thereof. *Per Reg. Trin. 4 W. & M. King's Bench.*

25. The like in the Common Pleas. *Per Reg. Pas. 5 W. & M.*

Of Perfecting Bail.

26. And in every Action where special Bail is put in, and excepted against, and Notice of Exception is given in Writing to the Defendant's Attorney, the Defendant shall procure his Bail to justify, if the Notice be given in Term-Time, in four Days after Notice, or shall add other Bail, who shall justify within the said four Days; but if such Exception be taken and Notice thereof given in the Vacation, the Bail put in, or other additional Bail, shall justify upon the first Day of the subsequent Term. *Per Reg. Cur. Easter 5 Geo. 2. B. R.*

27. And in C. B. If special Bail be excepted against, the Defendant shall perfect it within four Days after Exception, or the Plaintiff may proceed on the Bail-Bond. *Per Reg. Trin. 3 & 4 Geo. 2.*

28. At-

28. Attornies who put in Bail by Recognisance before a Judge, if the Plaintiff accepts it, to file the said Bail within 20 Days after such Acception, under the Penalty of 40 s. *Per Reg. Trin. 13 Car. 2. B. R.*

Of filing  
Bail-Piece;

29. And after Bail is transmitted (as before) it shall be forthwith filed with the proper Officer, or otherwise it shall be as no Bail; and the Plaintiff is at Liberty to proceed on the Bail-Bond, as if no such Bail was ever put in; and the Defendant in Case he be admissible to plead to the original Action, shall not be admitted so to do, unless he first pay to the Plaintiff the full Costs of Suit on the Bail-Bond; and plead as of the Time when Bail should have been duly entred. *Per Reg. Hil. 6 G. 1. & Mic. 6 G. 2. C. B.*

30. Where the Plaintiff declares for or recovers a greater Sum than that which is expressed in the Process, the Bail shall not be discharged, but be liable for so much as is sworn to and indorsed on the Process, or for any lesser Sum, which the Plaintiff shall recover. *Reg. Easter 5 Geo. 2. K. B.*

For how  
much the  
Bail is lia-  
ble.

31. If any Person or Persons being Bail in this Court for any Defendants in any Action whatsoever, be impleaded by Action of Debt upon their Recognisance, Of surrendering Defendants in Discharge of such Bail.

such Person or Persons shall have Leave to surrender such Defendant into the Custody of the Marshal of this Court in Discharge of his Bail, by the Space of 8 Days next after the Return of the *Latus* or other Process against such Bail. And upon Notice thereof given to the Plaintiff or his Attorney, all further Proceedings against such Bail shall stay. *Per Reg. Trin. 1 Annae, B. R.*

32. And when the Bail is impleaded on a *Scire facias*, they may bring in the Body of the Defendant at any Time before the Return of the *Alias scire facias*, and surrender him in their Discharge, for till then the Bail has not forfeited their Recognisance.

33. And where any Defendant is surrendered in Discharge of his Bail, the Defendant's Attorney must forthwith give Notice of it to the Plaintiff's Attorney, and make Affidavit thereof, before Bail-Piece shall be filed, or the Bail discharged, and in Default thereof such Surrender is void. *Per Reg. Trin. 1 Annae, B. R.*

34. And where any Person shall surrender himself in Court or before one of the Judges in Discharge of his Bail, the *Reddidit se* shall be left with the Secondary, or Clerk of the Judge before whom  
 I such



such Person was surrendered, to be affiled ; and a Copy or Note thereof under the Hand of such Judge or Secondary shall be delivered to the Marshal at the Time of Commitment, and such Copy or Note shall be made by the Person so surrendered, or his Attorney. *Per Reg. Trin. 3 Anne, B. R.*

35. And when the Defendant has surrendered himself, a Certificate from the Prison, that the Defendant is in Custody, must be taken to the Master of the King's Bench Office, who will thereupon discharge the Bail-Piece ; and till that is done, the Bail are liable.

36. And by a Rule in the Common Pleas in *Mic. 1654*, the Principal surrendering himself at any Time after Bail put in, and before or upon the Day of Appearance of the *Scire facias* returned *Scire feci*, or of the second *Scire facias* returned *Nihil*, or in Case there shall be an Action of Debt brought upon the Recognisance against the Bail ; then if the Principal shall surrender himself upon or before the Process returned, no further Proceedings to be against the Bail.

## C H A P. X.

*Of being discharged out of Prison.*

1. **I**F any Prisoner charged in Execution for any Sum not exceeding 100 Pounds in any Prison, shall be minded to deliver up to his Creditors all his Effects, it shall be lawful for such Prisoner to exhibit a Petition to any of the Courts of Law from whence the Process issued, certifying the Cause of his Imprisonment, and an Account of his Estate, with the Dates of the Securities wherein any Part of it consists, and the Deeds or Notes relating thereto, and the Names of the Witnesses; and upon such Petition, the Court, by Order or Rule, is to cause the Prisoner to be brought up, and the Creditors at whose Suit he stands charged to be summoned; and upon the Day of such Appearance, if any of the Creditors neglect to appear, upon an Affidavit of the Service of such Rule the Court shall in a summary Way examine the Matter of the Petition, and shall tender to the Prisoner an Oath to the Effect following, (*viz.*) “I A. B. do solemnly swear, in the Presence of Almighty God, that the Account by

me delivered into this honourable Court, in my Petition to this Court, doth contain a true and full Account of all my real and personal Estate, Debts, Credits and Effects, whatsoever, which I, or any in Trust for me, have, or at the Time of my Petition had, or am, or was, in any Respect intitled to, in Possession, Remainder or Reversion (except the wearing Apparel and Bedding for me or my Family or the Tools or Instruments of my Trade or Calling, not exceeding Ten Pounds in Value in the Whole;) and that I have not, at any Time since my Imprisonment, or before, directly or indirectly, sold, leased, assigned, or otherwise disposed of, or made over in Trust for myself, or otherwise, other than as mentioned in such Account, any Part of any Lands, Estate, Goods, Stock, Money, Debts, or other real or personal Estate, whereby to have or expect any Benefit or Profit to myself, or to defraud any of my Creditors to whom I am indebted. So help me God." If the Prisoner take the Oath, and the Creditors be satisfied with the Truth thereof, the Court may order the Effects contained in such Account, or so much as may be sufficient

to satisfy the Debts and the Fees due to the Keeper of the Prison, to be, by a short Indorsement on the Back of the Petition signed by the Prisoner, assigned to the Creditors, or one or more of them in Trust for the rest; and by such Assignment the Estate and Property of the Lands, Goods, Debts and Effects so assigned shall be vested, and the Prisoner shall be discharged out of Custody by Order of Court, without Fee; and the Persons to whom the Effects shall be assigned, paying the Fees to the Gaoler, shall divide the Effects in Proportion to their Debts; but if the Persons, at whose Suit the Prisoner was charged in Execution, shall desire Time to inform themselves, the Court shall remand the Prisoner, and direct him and the Persons dissatisfied to appear at another Day within the first Week of the Term next following; and if at such second Day the Creditor makes Default, or if he be unable to discover any Effects of the Prisoner omitted in his Petition, or to shew any Probability of his having been forsworn, the Court shall cause the Prisoner to be discharged, unless such Creditor insist on his being detained, and agree by Writing to pay the Prisoner 2 s. 4 d. per Week, to be paid the first Day of every Week,



Week, so long as he shall continue in Prison at his Suit; and on Failure of Payment, the Prisoner shall on Application to the Court be discharged by Order; and in Case the Prisoner refuse to take the Oath, or shall be detected of Falsity therein, he shall be remanded. The Person of the Debtor so discharged shall never after be arrested for the same Debt; but the Judgment shall remain in Force, and Execution may be taken out against his Lands and Goods; his Wearing Apparel, Bedding for himself and Family, and necessary Tools for his Trade excepted. If any Person, who shall take such Oath, shall upon Indictment for Perjury be convicted by Confession or Verdict, he shall suffer all the Pains of wilful Perjury, and shall be liable to be taken on any Process *de novo*, and shall never after have the Benefit of this Act. If the Effects assigned shall not extend to satisfy the whole Debts due to the Persons at whose Suit he was charged, and the Fees, there shall be an Abatement in Proportion, and the Gaoler shall come in as a Creditor for his Fees. Every Sheriff, Bailiff, or other Officer, offending against this Act (over and above such Punishments as he shall be liable to by the Laws now in Force) shall forfeit

to the Party grieved 50*l.* to be recovered with treble Costs. Stat. 2 Geo. 2. c. 22.

2. Before any Prisoner (except such who are in Prisons in *London, Westminster* and *Southwark*,) shall petition any of the Courts in *Westminster-Hall*, from whence the Process issued, he shall send Notice to the Creditors, that he intends to petition the Court; and also a Copy of the Account of his Estate, which he intends to deliver into Court; the said Notice to be left with the Creditors, or some of them, or the Attorney or Agent employed in such Cause. Upon such Petition the Court is required to make a Rule, to cause the Prisoner to be brought at an Expence not exceeding 12 *d.* a Mile (to be paid out of the Effects of the Prisoner; and if the Prisoner have not sufficient Effects, then to be paid by the Treasurer of the County) to the next Assizes, if within *England*; and if within *Wales* or *Chester*, then the Prisoner shall be brought to the next Great Sessions for the County; and the Creditors, at whose Suit such Prisoner shall stand charged, shall be summoned to appear by Rule of the Court from whence the Process issued, to be served thirty Days before such Assizes or Great Sessions. The Judges of Assize or Great Sessions are to

appoint a Time for hearing the Petition, during the Assizes or Great Sessions; and on Appearance of the Creditors, or in Default thereof, on Affidavit of their being served, the Judges shall in a summary Way examine such Petition, upon which Examination the Judges shall tender to such Prisoner the Oath in the Act 2 Geo. 2. cap. 22. and the Judges of Assizes or Great Sessions shall give such Relief and Directions, as the Court out of which the Process issued might have done; and a Record of such Judgment shall be made up, and returned under the Hand of the Judge before whom it shall be made, to the Court from whence the Process issued. The Judges of the Great Sessions in *Wales* and *Chester* shall have the same Power for Relief of Debtors who shall be imprisoned within their Precincts as the Courts in *Westminster-Hall*. If any Person shall be arrested by Virtue of any Process or Warrant, and shall refuse to be carried to some safe Dwelling-House of his own Appointment, so as such Dwelling-House be in a City or Market-Town, then within three Miles from the Place where the Arrest shall be made, and so as such be not the House of the Person arrested, provided it be within the same County and Liberty, it

shall be lawful for the Officer to carry the Person so refusing to Gaol, by Virtue of such Process. *Stat. 3 Geo. 2. c. 27.* No Person charged in Execution shall be allowed to petition upon the said Acts of Parliament, unless such Petition be exhibited before the End of the Term next after such Person shall be charged in Execution. The said Acts shall not relate to any Person who shall be taken by *Capias* for running Goods, or for receiving such Goods, knowing them to be run; but it shall be lawful for any Officer to secure such Person, as if the said Acts had never been made. Where by the said Acts an Oath is required, the solemn Affirmation of a Quaker shall be taken in Lieu thereof; and every Person convicted of wilful and false Affirming, shall suffer the Penalties of wilful and corrupt Perjury. *Stat. 8 Geo. 2. cap. 24.*

For Want  
of Proceed-  
ing in due  
Time.

3. In the King's Bench, if any Defendant be committed into the Custody of the Marshal, or shall be charged in his Custody, or shall be arrested or committed by Process of that Court into the Custody of any Sheriff, or other Officer, at the Suit of any Plaintiff, and shall remain in Custody two Terms, and the Plaintiff does not declare against him within that Time; such Defendant after the



the End of the second Term after such Imprisonment (inclusive of the Term in which the Writ is returnable) shall be discharged out of Prison, upon filing Common Bail, signed by one of the Judges of the Court without giving Notice to the Plaintiff or his Attorney. And if the Plaintiff declares against such Defendant, and does not proceed to Trial or Judgment within three Terms after such Declaration is delivered; or if the Plaintiff shall obtain Judgment against such Defendant, and does not charge him in Execution within two Terms after Judgment obtained, such Defendant shall have Leave to file Common Bail, or have a *Supersedeas* to be granted by one of the Judges of the said Court, if Cause be not shewn to the contrary by the Plaintiff or his Attorney, on Notice given to either of them by the Defendant; and Oath thereof to be made if the Plaintiff does not appear to shew Cause as aforesaid. *Per Reg. Car. Trin. 2 Geo. 1.*

4. And in the Common Pleas, if the Defendant be committed to Prison by Process of that Court, or *Habeas Corpus*, the Prisoner entering his Appearance with the Prothonotary in Case of a Plaint or an Attachment of Privilege; or with the Pilazer in Case of other Process, and giving

Rule to declare, the Plaintiff not declaring before the End of the next Term after the Commitment, the Defendant may be discharged by *Supersedeas* at the End of the next Term, and the Plaintiff has Liberty to declare upon that Appearance the next Term after that, at the furthest. Reg. Cur. Mic. 1654, & Hill. 14 & 15 Car. 2.

5. And if any Defendant shall render himself, or be rendred to the Fleet Prison in Discharge of his Bail, at the Suit of any Plaintiff, where no further Proceedings by Declaration has been had against such Defendant before such Render, unless the Plaintiff shall declare against such Defendant within two Terms after such Render; and where any Declaration hath been delivered against such Person so rendring himself, or being rendred, or Judgment has been had against him before such Render, unless the Plaintiff shall proceed to Judgment upon such Declaration delivered within three Terms after such Render (the Defendant having appeared) and charge such Defendant in Execution within two Terms after such Judgment obtained, such Defendant may be discharged out of Custody by *Supersedeas* to be allowed by one of the Judges of the Court, if Cause be  
not

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not shewn to the contrary by the Plaintiff or his Attorney; upon Notice given to either of them by the Defendant's Attorney or Agent, and Oath made of such Notice. *Per Reg. Easter 8 Geo. 1.*

6. And if any Plaintiff shall declare against any Defendant in the Custody of the Warden of the Fleet Prison, or any Sheriff or other Officer, and shall not proceed to Judgment within three Terms after Declaration delivered, inclusive of the Term in which the Declaration shall be delivered, the Defendant having appeared, or if any Plaintiff having obtained Judgment in any Action against any Defendant being a Prisoner, as aforesaid, and shall not charge such Defendant in Execution upon the Judgment so obtained within two Terms next after such Judgment, including the Term in which Judgment shall be signed, then such Defendant may be discharged out of Custody by *Supersedeas*, to be allowed by one of the Judges of the Court, if Cause shall not be shewn by the Plaintiff or his Attorney, why such Plaintiff had not proceeded to Judgment and Execution as aforesaid upon Notice to either of them given by the Defendants Attorney or Agent, and Oath made of such Notice given. *Per Reg. Eod. Term.*

7. And in all Cases where a Prisoner in the Fleet, or other Gaol or Prison, is discharged, or ordered to be discharged by the Common Pleas Court, or any Judge thereof, by *Supersedeas*, for Want of Prosecution, and such Prisoner be afterwards arrested, or detained in Custody by Action of Debt, brought upon a Judgment obtained in the Cause wherein such Prisoner was so discharged; a common Appearance shall be accepted for the Defendant in such Action. *Per Reg. Cur. Hil. 8 Geo. 2. C. B.*

8. If a Defendant be legally delivered from an Arrest upon any Process, he shall not be arrested again at the same Time, by Virtue of another Process at the Suit of the same Plaintiff. The Attorney or Plaintiff offending, the Attorney to be expelled, and both to be punished as the Court shall think fit. *Per Reg. Cur. Mic. 15 Car. 2. B. R.*

*The End of the First Part.*

**PART.**



# PART II. OF ARRESTS IN Criminal Cases.

## CHAP. I.

*What a Crime or an Offence is, and  
who may be guilty of it.*

1. **A** Crime or Offence is an Act committed against a Law, or omitted where the Law requires it, and is punishable by it. *West's Symb. Tit. Indictments, §. 2.*

2. An Offence necessarily supposes a Who may wilful Disobedience of the Law, and be guilty cannot be imputed to those who are ei- of it.  
ther incapable of understanding or con-  
forming

forming themselves to it; therefore some Offenders are excusable.

3. First, For Want of Reason, to distinguish betwixt Good and Evil, as *Infants* under the Age of Discretion. But if it appear, that the *Infant* under the Age of Discretion could distinguish between Good and Evil, as if one of 9 or 10 Years old kill another, and hide the Body, or make Excuses, or hide himself, he may be convicted and condemned, and forfeit, &c. as much as if he were of full Age; but in such Cases the Judges will respite Execution, in Order to obtain a Pardon; *Idiots*, *Lunaticks*, &c. or a Person *Non compos mentis*, becoming so before Conviction, must not be arraigned; and if after Conviction, he must not be executed.

4. But a dangerous *Madman* may be kept in Prison till he recover his Senses; and if it be dubious whether a Criminal who appears to be a *Lunatick*, be really so or not, that must be tried by an Inquest of Office, to be returned by the Sheriff of the County where the Court sits; and if they find that he feigns himself mad, and continues to refuse to answer, he is to be dealt with as one who stands mute.

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5. And if any one incites a *Madman* to commit Murder or any other Crime, he is deemed a principal Offender, and is as liable to be punished as if he had done it himself. Yet if an *Infant* or one *Non compos mentis* commits a Trespass against the Person or Possession of another, he may be compelled in a Civil Action to give Satisfaction for the Damage; and those who commit Offences when they are drunk, or in a Passion, are not to be excused, for their Acts are voluntary and owing to their own Folly.

6. And Secondly, *The Want of Liberty*, or a Person's being under the Power of another, is sometimes an Excuse. As a Wife, who in respect of the Power and Authority which her Husband has over her, is not to be punished for a bare Theft in Company with her Husband, or by his Coercion.

7. Nor is she deemed accessory to a Felony for receiving her Husband who has been guilty of it, as her Husband shall be for receiving her.

8. But if she either voluntarily or by the Command of her Husband commit a Theft, or be guilty of Treason, Murder, or Robbery, in Company with, or Coercion of her Husband, she is punishable.

9. And

9. And in all Offences not Capital, a Wife may be put to Answer with her Husband, or alone without him, tho' they both joined in committing the Offence.

10. A Servant is not to be excused when he has committed a Crime, tho' he acts by the Command or Coercion of his Master; for a Master has no such Power over him. Neither is a Son by the Command or Coercion of the Father or Mother.

11. In all Crimes there must be an evil Intention; nor is an evil Intention punishable equally with the Fact, except in Treason.

12. Where one has the Use of his Reason, and is at Liberty, his Endeavour to commit a Felony, as to rob, &c. is punishable; tho' not to that Degree as if the Felony and Robbery, &c. had been actually committed. For in such Cases the Will shall not be taken for the Deed.

13. And not only they which actually commit the Offence are punishable, but *cure, that command, persuade, advise, pro-* those *abet or consent* to the Committing of an Offence, or conceal it after it is done, are esteemed to offend.



CHAP. II.

*The different Kinds of Crimes, for which Offenders may be arrested.*

1. **A**LL Crimes or Offences are either *Capital*, for which the Offender may lose his Life; or *Not Capital*, for which the Offender may forfeit his Lands and Goods, or for which he may be fined, or be corporally punished, or be both fined and corporally punished, &c. but must not lose his Life.

2. Capital Offences are *High Treason*, *Petit Treason*, and *Felony*.

3. First, **HIGH TREASON** is an High Treason. Offence against the Security of the King and Kingdom, and by the *Stat. 25 Ed. 3. c. 2.* may be committed, 1. By King, Queen, Son, Daughter. compassing or imagining the Death of the King, Queen, or of their eldest Son and Heir. 2. By violating the King's Companion (i. e. *Carnally knowing the King's Wife*), or the King's eldest Daughter unmarried, or the Wife of the King's eldest Son and Heir. 3. By levying War against the King in his Realm. 4. By adhering to the King's Enemies in his Realm, giving them Aid or Comfort in the Realm or elsewhere. 5. By counterfeiting the Seal, Rebelling, &c.  
King's

Money.

Chancel-  
lor and  
Judges.

Money.

King's Great Seal, Privy Seal, or his Money. 6. By bringing false Money into this Realm, counterfeit to the Money of *England*, knowing it to be false, and merchandizing or making Payment with it. 7. By slaying the Chancellor, Treasurer, or the King's Justices of the either Bench, Justices in Eyre, or Justices of Assize, or other Justices assigned to hear and determine, being in their Places doing their Offices.

4. And forging or counterfeiting any Foreign Coin, current by the King's Proclamation, is High Treason. *Per Stat. 1 Mar. Sess. 2. c. 6.*

5. And to bring into this Realm Money counterfeited according to the Similitude of Foreign Coin current here, to the Intent to merchandize with it, is High Treason. *Per Stat. 1 & 2 P. & M. c. 11.*

6. And to wash, clip, round, or file (*Per Stat. 5 Eliz. c. 11.*) and to impair, diminish, falsify, scale or lighten for Lucre or Gain, the Money of this Realm, or of other Realms made current by Proclamation, is deemed an Offence in Treason. *Per Stat. 18 Eliz. c. 1.*

7. And to make or mend, or buy, sell, or have in his Possession any Mould or Press for Coining, or convey such Instruments

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ments out of the King's Mint, or Mark upon the Edges of Coin, or colour or gild any Coin resembling the current Coin of this Kingdom, is High Treason. *Stat. 8 & 9 W. 3. c. 26.*

8. And if any Person by Writing or Preaching, or by any Speech, open Deed or Act, advisedly maintain the Jurisdiction of the Bishop of Rome, he is guilty of a *Premunire* for the first Offence, and High Treason for the second: And if any Person who hath a Charge, Cure or Office in the Church, or an Office or Ministry in the Ecclesiastical Court, or shall say or hear private Mass, &c. refuse a second Tender of the Oaths of Supremacy, &c. is guilty of High Treason. *Stat. 5 El. c. 1.*

Pope, Popish Priests and Papists.

9. And to put in Ure any Pope's Bull, &c. for absolving the Subjects from their Allegiance, and willingly to receive any such Absolution, &c. or to obtain from the See of Rome any Bull or Writing whatsoever, and put it in Ure, is High Treason. *Stat. 13 Eliz. c. 2.*

10. And to absolve Subjects from Obedience, and reconcile them to Obedience of Rome, is Treason in the Reconciler and Reconciled. *Stat. 23 Eliz. c. 1.*

11. And if any Ecclesiastick born in the King's Dominions, that is ordained or professed by Popish Authority, shall

re-

remain in the King's Dominions, or come from beyond Sea, and not submit to some Bishop, or Justice of Peace within 3 Days, and take the Oaths, he is guilty of High Treason. And if any Subject not being an Ecclesiastick, does not return from a Popish Seminary within 6 Months after a Proclamation in London, and submit, &c. within 2 Days, he is guilty of High Treason whenever he otherwise returns. *Stat. 27 Eliz. c. 2.*

Protestant  
Succession.

12. If any Person endeavour advisedly or directly to hinder any Person who shall be next in Succession to the Crown for the Time being, according to the Limitation in the *Stat. 2 W. & M. Sess. 2. c. 2, & 12 W. 3. c. 2.* is guilty of High Treason. *Stat. 1 & 2 Anna, c. 17.*

13. To have Correspondence or keep Intelligence with the Pretender, or knowingly with any Person employed by him, or to pay Money to his Use, is High Treason. *Stat. 4 An. c. 8. & 6 An. c. 7.*

Soldiers.

14. If any Subject of Great Britain list himself, or procure any Subject to list himself, with an Intent to go beyond Sea, to serve any Foreign Prince, State, &c. as a Soldier, without Licence, it is High Treason. *Stat. 12 Anna, c. 11.*

Petit Treason.

15. Secondly, **PETIT TREASON** is, where one out of Malice takes away the



the Life of a Subject, to whom he owes a special Obedience; as

16. If a Servant kills his Master, his Mistress or Master's Wife, or procures another to do it.

17. Or if a Wife kills her Husband.

18. And Thirdly, *FELONY* is every Capital Crime committed with an evil Intent. Publick Felonies.

19. It is *Felony* for any sworn Servant King. in the Cheque-Roll of the King's Household, under the Sate of a Lord, to make any Confederacy, Compassings, Conspiracy and Imagination with any Person, to destroy or murder the King, or any Lord of this Realm, or any other Person sworn to the King's Council. Stat. 3 H. 7. c. 14.

20. It is *Felony* to blanch Copper for Sale, or to mix blanch'd Copper with Silver, or knowingly or fraudulently to Money. buy, or sell, or offer to Sale Blanch'd Copper alone, or mixt with Silver; or knowingly and fraudulently to buy any Mixture that shall be heavier than Silver, and look and touch and wear like Standard-Gold, but be manifestly worse; or to receive or buy any counterfeit mill'd Money, or mill'd Money unlawfully diminished and not cut in Pieces, at a lower Rate than the same by its Denomination shall import, or was coined

coined or counterfeited for, Stat. 8 Ed. 3. c. 26.

Soldiers  
and Mari-  
ners.

21. For any Soldier not being a Cap-  
tain, to leave the King's Service without  
Licence, is Felony Stat. 7 H. 7. c. 1. §  
3. H. 8. c. 5.

22. Also to go out of the Realm to  
serve a Foreign Prince or State without  
taking the Oaths of Allegiance before  
Departure, is Felony: And if any Gen-  
tleman or Person of Higher Degree, or  
any Person who hath born any Office in  
Camp or Army, shall go out of the  
Realm to serve such Foreign Prince or  
State, without being bound with two  
Sureties not to be reconciled to the See  
of Rome, and not to enter into any Con-  
spiracy against the King, is guilty of Fe-  
lony. Stat. 3 Jac. 1. c. 4.

23. And Soldiers or Mariners wan-  
dering without a Testimonials, or idle  
Persons which wander as Soldiers and  
Mariners, shall suffer as Felons. Stat. 39  
Eliz. c. 17.

24. And if a Soldier raise a Mutiny,  
or refuse to obey his superior Officer, or  
lift any Officer in executing his Office,  
or draw, or offer to draw, or strike, or  
lift up any Weapon against his superior  
Officer, it is Felony. Stat. 5 Geo. 6.

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25. If a Person having the Charge King's Armour, or Custody of the King's Armour, Ordnance, Muniti<sup>on</sup>, &c. or of any Victuals provided for Soldiers, Mariners, &c. shall for Lucre wilfully imbezil the same to the Value of 20 Shillings (tho' at several Times) it is Felony. Stat. 31 Eliz. c. 4.

26. Willingly to retain, relieve, aid, or maintain any Jesuit, Seminary or other Popish Priest, &c. being at Liberty or out of Hold, knowing him to be such, is Felony without the Benefit of the Clergy. Stat. 27 Eliz. c. 2.

27. And by the Stat. 35 El. c. 2. if such a Popish Recusant, as is mentioned in the said Statute, does not depart the Realm within the limited Time, if he does not conform himself within three Months, as the Act requires, or if he returns without the King's Licence, he is a Felon without Clergy. Stat. 35 Eliz. c. 2.

28. For 12 or more Persons riotously assembled together, (being required by a Justice of the Peace, Sheriff, Under-Sheriff, Head-Officer of any City or Town corporate, where such Assembly shall be, by Proclamation made in the King's Name immediately to disperse themselves,) and afterwards unlawfully and riotously continuing together for an Hour after such Proclamation, or after

a wil-

a wilful Hindrance from making the said Proclamation, is Felony without Clergy. And so it is if any Persons unlawfully, riotously and tumultuously, and with Force demolish or pull down, or begin to demolish or pull down any Church or Chapel, or Building for Religious Worship, certified and registred according to *Stat. 1 W. & M. c. 18.* or any Dwelling-House, Barn, Stable, or other Outhouse. *Stat. 1 Geo. 1. c. 5.*

Breach of  
Prison,  
Escape,  
and Ref-  
cous.

29. For Breach of Prison, none shall have Judgment of Life and Member, except the Causes for which he was taken and imprisoned require such Judgment, if he had been convicted. *Stat. 1 Ed. 2.*

30. Prisons within that Statute are the Stocks, the Custody of any that lawfully arrests, or the House of a Constable that lawfully arrests, or other Prison, where detained; but if a Gaoler voluntarily permits him to escape, it is Felony in the Gaoler and not in the Prisoner, and if a Gaoler is negligent, it is Felony in the Prisoner, and a Misdemeanor in the Gaoler. A Hindrance to arrest one for Felony is a Misdemeanor only; but if the Party is arrested and then rescued, if arrested for Felony, the Rescuer is a Felon; if for Treason a Traytor, if for Trespass fineable.



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31. Persons, three in Number, being assembled for Running Goods, and armed; and two in Number passing within 5 Miles from the Sea-Coast, or a navigable River, with Horse, &c. with more than 6 Pounds of Tea, or 5 Gallons of Brandy, not having a Permit, or other Foreign Goods, of above 30 l. Value, landed without due Entry and Payment of Duty, or resist the Officers in executing their Office, is guilty of Felony.

Stat. 9 G. 2. c. 17.

32. Murder committed upon *One's self* is called *Felo de se*; and Murder of another is, when a Man of sound Mind and Memory, and of Age of Discretion, unlawfully kills any Person, by premeditated Malice, either express or implied, so as the Party wounded or hurt dies of the Wound or Hurt within a Year and a Day.

Private Felonies.

Murder.

33. Manslaughter is the Killing of another without Malice in the present Heat on a sudden Quarrel, upon a just Provocation, or in the Commission of a voluntary and unlawful Act, without any deliberate Intention of doing Mischief. And is not punishable as Murder; except

Manslaughter.

34. Where one thrusts or stabs another, not having then a Weapon drawn, or

or then striking first, so that he dies thereof within 6 Months after, although it were not Malice or Forethought; in these Cases he shall not have the Benefit of Clergy. But this does not extend to charge any Person with Thrusting or Stabbing, when it is done only *Se defendendo*, by Misfortune, or in keeping the Peace, or in chastising a Child, or Servant, with no Intent or Purpose to commit Manslaughter. *Stat. 1 Jac. 1. c. 8.*

35. The Words, *That bath not then first stricken*, or *That bath not then any Weapon drawn*, in the Statute are construed to be the Stroke given by the Party slain, at any Time of the Quarrel, and not to any Stroke just before the Thrust or Stab; and so then shall be construed to a Weapon drawn at any Time during the Quarrel.

Chance-medley.

36. Chancemedley is, where a Man is doing a lawful Act without Intent of Hurt to another, and the Death of some Person doth by Chance ensue. *Manslaughter* is called Chancemedley, but then it signifies the Killing a Man upon a sudden Brawl or Contention by Chance; but Chancemedley in common Speech is, where Death happens, when one is doing a lawful Act, and without an ill Intent. The Offender forfeits his Goods, but is pardoned of Course.

37. Excusable *Homicide* is *Se defenden*- Excusable  
do, or when one hath no other Means of Homicide.  
preserving his own Life, than by killing  
the Person who reduced him to such a  
Necessity.

38. If one is indicted or appealed for  
the Death of another who was attempt-  
ing to murder him, or rob him on the  
Highway, or in his House (and it be so  
found by Verdict) he shall be acquitted  
thereof. *Stat. 24 Hen. 8. c. 5.*

39. Justifiable *Homicide* must be also Justifiable  
upon a Necessity, as in *Criminal Cases* by Homicide.  
an Officer, in Pursuance of a Judgment;  
when a Sheriff or Bailiff, having a law-  
ful Warrant, arrests a Person that has  
actually committed a Felony, or is in-  
dicted of Felony, tho' no Felony done,  
or the Party is innocent, and he will not  
obey; or when he will not suffer himself  
to be arrested, but defends himself; or  
when one either with or without War-  
rant pursues a Felon upon Hue and Cry  
that flies for it, or one that is indicted  
for Felony only; or if a Prisoner assaults  
those that conduct him to Gaol, or his  
Gaoler, whilst he is endeavouring to  
escape; or if those who are engaged in a  
Riot, or Forcible Entry or Detainer, stand  
in Opposition to a Justice's Command or  
lawful Warrant; or if any are doing

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Tref-

Trespass in a Forest, Chase, Park, or in any inclosed Ground where Deer are kept, and will not render themselves to the Keepers, but fly or defend themselves; in these Cases a Killing may be justified. And in *Civil Cases* a Sheriff, &c. it is said, may kill one that resists an Arrest; but not one that flies from the Execution of a Civil Process; so he may kill one that resists being retaken on an Escape; but no private Person has this Authority in *Civil Cases* as he has in *Criminal*; neither has a Sheriff, but upon an absolute Necessity, for if he might be taken without killing him it is esteemed Murder.

40. Also justifiable *Homicide* may be in Defence of one's Person, or House, or Goods, as by a Woman attempted to be ravished; by one attempted to be murdered, or robbed, &c. In these Cases, upon the special Matter found, the Party is dismissed.

Private  
Felonies.

Buggery.

Rape.

41. *Buggery* or *Sodomy* is Felony without Clergy, in both Agent and Patient, unless the Patient is within the Age of Discretion.

42. *Rape* is the Carnal Knowledge of a Woman by Force against her Will, and is Felony. Also Aiders and Abettors are Felons.

43. For



43. *Forcible Marriage* or Defilement of a Woman of Estate is Felony. For, if any Person shall take away any Woman having Lands or Goods, or that is Heir apparent to her Ancestor, against her Will, and marry or defile her, the Takers, Procurers, Abettors and Receivers of the Woman, knowing the same, are Felons, provided that this does not extend to any Person taking any Woman claiming her only as his Ward, or Bond-Woman. *Stat. 3 H. 7. c. 2. & 39 Eliz. c. 9.*

44. *Polygamy* is where a Man marries two or more Wives together, or a Woman two or more Husbands together.

45. To marry, the former Husband or Wife being alive, is Felony, unless the Former has been beyond Sea for seven Years; or has been absent for seven Years in any of the King's Dominions, the One not knowing the Other to be living within that Time; but this does not extend to Persons divorced, or former Marriage declared void by the Spiritual Court, nor Marriage made within the Age of Consent. *Stat. 1 Jac. 1.*

II.

46. *Mayhem* is a Hurt in any Part of Man's Body, whereby he is rendred

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the less able to fight in defending himself, or annoying his Enemy.

47. If any Persons on Purpose, or Malice forethought, and by lying in Wait, shall cut or disable the Tongue, put out the Eye, or slit the Nose, cut off the Nose or Lip, or cut off or disable any Limb or Member of any Subject, with Intention to maim or disfigure him, such Persons, their Counsellors, Aiders and Abettors are Felons without Clergy. *Stat. 23 Car. 2. c. 1.*

Simple  
Larceny.

48. *Simple Larceny* is either *Grand* or *Petit*. 1. *Grand Larceny* is a Felonious and Fraudulent Taking and Carrying away, by Man or Woman, the meer personal Goods of another, above the Value of 12 *d.* not from the Person, or by Night in the House of the Owner, and is Death. 2. *Petit* or *Petty Larceny* is when the Goods Stolen do not exceed the Value of 12 *d.* Punishment is Whipping.

Mixt Lar-  
ceny.

49. *Mixt Larceny* is either a Taking from the Person of a Man, or from his House. *Larceny from the Person*.

50. *Robbery* is a Felonious and Violent Assault upon the Person of another, taking from him Goods or Money, to any Value, and putting him in Fear, and is Felony without Clergy. And *Larceny* from

from the Person, which does not put him in Fear, is either *without his Knowledge*, as by Picking the Pocket or Cutting the Purse, and stealing from thence to the Value of 12 d. Or *with his Knowledge*, as by Taking off his Hat or Wig, &c. from his Head, and running away with it. 2.

*Larceny from a House*, as to rob any Person in his Dwelling-House, the Owner, his Wife, or Servants, or other Persons being there, and put in Fear, is Felony without Clergy. Stat. 23 H. 8. c. 1. And to take Goods feloniously, to the Value of 5 l. out of any Dwelling-House or Out-House, tho' no Person is there, is Felony without Clergy. Stat. 39 Eliz. c. 15.

51. And feloniously taking away by Day or Night, Goods out of a Dwelling-House, the Owner or other Person being there, and put in Fear; or to rob any Dwelling-House in the Day-Time, any Person being therein; or be accessory thereto; or break any Dwelling-House, Shop or Ware-House thereto belonging, in the Day-Time, and feloniously take away any Money or Goods to the Value of 5 s. shall not have the Benefit of the Clergy. And taking away with an Intent to steal, imbezel or purloin any Chattel, Bedding or Furniture, which by

Agreement he is to use, or shall be let to him to use in Lodgings, is Larceny and Felony. *Stat. 3 & 4 Will. & Mar. c. 9.*

52. Or by Day or Night privately to steal Goods, to the Value of 5 s. or more, out of a Shop, Ware-House, Coach-House, or Stable, tho' such Shop, &c. be not broke open, or tho' any Person be or be not in such Shop, &c. or to aid in committing such Offence, loses the Benefit of the Clergy. *Stat. 10 & 11 W. 3. c. 23.* And by 12 *Ann. c. 7.* The like where the Sum is above 40 s.

53. And knowingly to receive or buy Stolen Goods, or harbour Felons, is Felony. *Stat. 5 Ann. c. 31.*

Piracy.

54. *Piracy* is a Felony against the Goods of a Subject, by a Depredation or Robbing at Sea.

Burglary.

55. *Burglary* is where a Person in the Night breaketh and entereth into the Mansion-House of another, with an Intent to commit Felony there, whether the felonious Intent be executed or not.

House-Breaking.

56. *House-Breaking* is where the Offence is committed by Day.

House-Burning.

57. *Arson* or *House-Burning* is the malicious and voluntary Burning the House of another by Day or Night, and is Felony without Clergy.

58. To



58. To steal or willingly to take away, Records, withdraw or avoid any Record, Writ, Return, Panel, Process, or Warrant of Attorney in Chancery, Exchequer, or either Bench, or Treasury, by Reason whereof a Judgment is reversed, is Felony. *Stat. 8 Hen. 6. c. 12.*

59. To kill Cattle in the Night wilfully, is Felony. *Stat. 22 & 23 Car. 2.*

60. See the late Stat. relating to Sheep-Stealing.

61. For any Person belonging to a Ship, to destroy it; or procure it to be destroyed, is Felony. *Stat. 1 Ann. c. 9, & 12 Ann. Sess. 2. c. 18.*

62. Bankrupts not conforming according to the Notice, or concealing their Effects, are Felons without Clergy.

63. Forgery of Deeds, Court-Rolls, or Wills in Writing, after Conviction for the first Offence, is Felony without Clergy. *Stat. 5 Eliz. c. 14.*

64. And so of the Common Seal of the Bank of England, or Bank-Bill or Note, Exchequer-Bills, Stamps, South-Sea-Bonds, Lottery-Orders, &c.

*Note;* The Benefit of the Clergy was an ancient Privilege of the Church, where one in Orders claimed to be delivered to his Ordinary, to be

purged of the *Felony*; and all Persons that could read were allowed to be Clergymen, because heretofore few besides them had Learning. So if the Offender could not read, he was to be hanged. And in all Felonies (except for Robbing Churches) the Offender shall have the *Benefit of the Clergy*, unless it is expressly taken away by some Statute.

Conjurati-  
on and  
Witch-  
craft.

64. *Crimes Not Capital* are, First, relating to Religion. As Conjuraton and Witchcraft, &c. which formerly was firmly believed, and made Felony without Benefit of the Clergy, by the *Stat. 1 Jac. 1. c. 12.* but now it is very justly enacted, That no Prosecution shall be against any Person for Witchcraft, Sorcery, Inchantment or Conjuraton, or for charging another with such Offence; and if any Person shall pretend to use Witchcraft, &c. or undertake to tell Fortunes, or from Skill in any occult or crafty Science to discover where Goods stolen or lost may be found; every Offender being convicted, shall be imprisoned for one Year, and once in every Quarter of the said Year shall stand in the Pillory one Hour in some Market-Town, on the Market-

Market-Day, and shall (if the Court think fit) give Securities for good Behaviour. *Per Stat. 9 Geo. 2. c. 5.*

65. If any Person, having professed the *Christian Religion*, be convicted of deny-<sup>Blasphemy, &c.</sup>ing one of the *Persons* in the *Trinity* to be God, or maintaining that there are more Gods than one, or denying the Truth of the *Christian Religion*, or the Divine Authority of the *Scriptures*, he is for the first Offence incapable of any Office, and for the second Offence disabled to sue in any Action, or to be Guardian, Executor, or Administrator, or to take by any Legacy or Deed of Gift, or to bear any Office Civil or Military, or Benefice Ecclesiastical for ever, and to be imprisoned three Years. *Stat. 9 & 10 W. 3. c. 32.*

66. To revile the *Sacrament* of Lord's <sup>Sacrament.</sup> Supper, is Fine and Imprisonment. *Stat. 1 Ed. 6. c. 1. 1 Eliz. c. 1.*

67. Using the Name of God jestingly, <sup>Name of God, &c.</sup>or profanely in a Stage-Play, Interlude, or Shew, to forfeit 10 l. *Stat. 3 Jac. 1. c. 21.*

68. There shall be no Assembly of People <sup>Lord's Day.</sup> whatsoever out of their own Parishes, on the Lord's Day, for any Sports, Bull-baiting, Bear-baiting, Interludes or Plays, or other unlawful Pastimes, in their

own Parishes, on Forfeiture of 3 s. 4 d. for every Offender. *Stat. 1 Car. 1. c. 1.*

69. Shoemakers, putting Boots or Shoes to Sale, forfeit 3 s. and 4 d. *Stat. 1 Jac. 1. c. 21.* And Butchers killing or selling, forfeit 6 s. 8 d.

70. And by 29 *Car. 2. c. 7.* no Persons whatsoever, above 14 Years old, shall exercise any worldly Labour, Business, or Works of their ordinary Calling on the Lord's Day (except the Works of Necessity and Charity, and the Dressing of Meat in Families, and the Selling of Meat in Victualling-Houses,) but shall exercise themselves in Duties of Piety, Publick and Private. And no Person shall publicly cry or expose to Sale any Goods on this Day (except Milk, which may be sold before 9 in the Morning, and after 4 in the Afternoon,) on Forfeiture of 5 s. Also no Drover, Horse-Courser, Waggoner, Butcher, or Higler shall travel, or come to their Inn on a Sunday, on Forfeiture of 20 s. And no Person shall travel with any Boat or Barge, except with the Allowance of some Justice of Peace, &c. on Forfeiture of 5 s. And in Case of Inability, &c. the Offender to be set in the Stocks two Hours.

71. But by *Stat. 11 & 12 W. 3. & 9 A.* a certain Number of Watermen, Hack-

ney-



ney-Coach-Men, and Chair-Men are allowed to ply on *Sundays* within the Bills of Mortality.

72. If a Servant, Labourer, common Soldier, or common Seaman curses or swears, and Swears he forfeits 1 s. And every other Person 2 s. Curfing  
ing.

For second Offence, double; and for the third, treble, to be levied by Distress; and if no Distress, to be set in the Stocks an Hour for one Offence, two Hours for more than one, if above 16 Years old; and if younger, to be whipt. *Stat. 6 & 7*

*W. 3. c. 11.*

73. Forfeiture for being drunk is 5 s. for Drunkenness. every Offence; and if the Offender is not able to pay, he is to be set in the Stocks 6 Hours. *Stat. 4 Jac. 1. c. 5.*

74. For keeping a Bawdy-House, is Fine Bawdry and Imprisonment; and those that resort to them may be bound for their good Behaviour.

75. Open Lewdness, as exposing One's self naked, is Fine and Imprisonment, &c.

76. Heresy is punishable by Excommu- Heresy. nication and Imprisonment.

77. Clergymen not using the Common Liturgy. Prayer Book, or derogating it, forfeit a Year's Profit of their Livings, and be imprisoned 6 Months; and others that derogate it, forfeit 100 Marks for the first Of-

Offence in 400. for the second; and for the third all their Goods and Chattels, and be imprisoned during their Life. Stat. 1 Edw. c. 2.

Church.

78. Every Person above 16 Years old to go to Church every Sunday and Holy Day, on Forfeiture of 20 s. for every Month. 23 Eliz. c. 1.

79. Secondly, against the King's Crown and Dignity.

Misprision

80. Misprision is a Neglect, Oversight or Contempt. As for One to conceal Treason or Felony committed by another; and in a large Sense it is such heinous Offences which are committed under the Degree of Felony.

Præmunire.

81. A Præmunire is an Offence whereby One shall be out of the King's Protection, and forfeit his Lands, Goods and Chattels, &c. and may be incurred by purchasing or pursuing Bulls, &c. from Rome, &c. which relate to the King, or to bring or receive them. Appealing to Rome from the King's Courts, defending the pretended Jurisdiction of the Pope; bringing or receiving Crosses, Beads, and other superstitious Things pretended to be hallowed by the Pope; contributing to the Maintenance of the Pope's Supremacy; refusing to take the Oaths of Allegiance

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## Chap. II. in Criminal Cases.

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Allegiance and Supremacy; affirming that both or either Houses of Parliament have a Legislative Power without the King; affirming that the Pretender has any Right to the Crown, &c.

82. Thirdly, against the Commonwealth in general.

83. Theft-Bote is where the Owner knows of the Felony, and takes his Goods again, or other Amends, not to prosecute the Person, to the Intent that the Thief may escape; and the Punishment is Fine and Imprisonment. But taking the Goods again that were stolen, without favouring the Thief, is no Offence.

Theft-  
Bote.

84. Perjury is a wilful and false Swearing absolutely in any Judicial Proceedings, in a Matter material to the Point in Question, when the Oath is lawfully administered, and is punishable by Fine, Imprisonment, Pillory, &c.

Perjury.

85. And so is Subornation, or procuring One to take a false Oath.

86. Forgery is a fraudulent making or altering (to the Prejudice of another,) a Court-Roll, Will, Charter, Deed, or Writing; and the Offender is to pay double Costs and Damages, and be set in Pillory, lose one of his Ears, and suffer a Year's Imprisonment; and the second Offence is Felony without Clergy.

Forgery.

87.

Bribery.

87. Bribery is, where One in a Judicial Place takes any Gift or Reward of any Person who hath Business before him, for doing his Office, or by Colour of his Office, except of the King only, unless it be for Meat or Drink, and that of small Value; or it is the Receiving or Offering an undue Reward to or by any Person concerned in the Administration of Publick Justice, to act contrary to his Duty. And is punishable by Fine and Imprisonment.

Extortion.

88. Extortion is the Taking by an Officer by Colour of his Office Money or other valuable Thing of any Person, that is not due, or more than is due, or before it is due; or it is an Oppression by Power or Pretence of Right. And is punishable by Fine and Imprisonment.

Barretry.

89. Barretry is a Common Moving, Exciting, or Maintaining of Suits or Quarrels either in Courts, or in the Country, by Disturbance of the Peace, by spreading false Rumors and Calumnies to raise Discord amongst Neighbours, or by taking or keeping the Possession of Lands in Controversy by Force, or Subtlety and Deceit, and most commonly by Suppression of Truth and Right; and is punishable by Fine and Imprisonment, &c.

Maintenance.

90. Maintenance is an unlawful Upholding of Quarrels against Justice; taking or keeping



keeping Possession of Lands, &c. for others; upholding the Plaintiff or Defendant in a Cause or Suit depending in a Court, which no way belong to one, either by assisting the Party by Words, Writing, Countenance or Deed.

91. But if One has an Interest in the Thing in Dispute, tho' only a Contingent, or possible or equitable Interest, he may maintain an Action relating to it; also by Reason of Consanguinity or Affinity, some Acts of this Kind are justifiable; a Lord may maintain the Action of his Tenant with Money, with respect to the Land holden of him; a Master may go along with his Servant to retain Counsel, and stand by him and assist him, whilst his Cause is tried; a Servant may solicit in his Master's Cause, but he may not lay out his Money to assist his Master; one Neighbour may go with another to his Counsel; and one may out of Charity give Money to a poor Man to carry on his Cause. An Attorney may lay out his own Money for his Client, to be repaid, and yet he may not carry on a Cause for another at his own Expence, on a Promise that he never will expect to be repaid, unless he carries the Cause.

92. The Offenders are liable to an Action at the Suit of the Party grieved, and they may be indicted and thereupon fined and imprisoned.

Champer-  
ty.

93. Champerty is one Sort of Maintenance, and is a Bargain with the Plaintiff or Defendant, to have Part of the Land, or Part of the Debt or other Thing in Suit, if they prevail, carried on at *One's* own Expence.

Embrace-  
ry.

94. Embracery is another Sort of Maintenance, and is an Attempt to influence a Juror to appear, or to instruct a Jury, or any way incline them to be more favourable to one Side than the other, by Promises, Threatnings, Letters, Money, Treats, &c. and the Offender is liable to an Action or Indictment.

Vexatious  
Informa-  
tions.

95. Vexatious Informations upon Penal Statutes are Offences against Publick Justice.

Conspira-  
cy.

96. A Conspiracy (strictly taken) is an Agreement between two or more, to indict an innocent Man of Felony, falsely and maliciously, who is accordingly appeal'd or indicted, and afterwards acquitted. Such Offenders may be punished by Fine, Imprisonment, &c.

Surety of  
Peace.

97. Surety of the Peace is the Acknowledgment of a Recognisance to the King, for keeping the Peace.

98. And

98. And a Justice may demand it *ex Officio*, where he sees Cause, or at the Request of a Subject or Person under the King's Protection, and it may be demanded against all Persons that are suspected to break the Peace, or that do break the Peace by Affrays, Battery, Wounding, or Words in the Presence of a Justice, Fighting, Quarrelling, Threatning to beat or kill another, or to burn his House, Barretors, Rioters, &c. and in all Cases where there is a present Danger, or Fear of future Danger.

99. Surety of good Behaviour differs but little from Surety of the Peace, and is required in a great many Offences. Good Behaviour.

100. An Assault is an Attempt to do a Hurt to One's Person; as by Offering to strike one, holding up his Fist in a threatening Manner, or by presenting a Pistol towards and near One, tho' no Hurt be actually done. Assault.

101. The Offender is liable to an Action or Damages, &c. and to an Indictment upon which he is to be fined, and imprisoned till the Fine is paid.

102. A Battery is an Injury done to the Person of another, in a rude and angry Manner; as by Striking, Pushing, Postling, Catching by the Arm, Filliping upon the Nose, Spitting in the Face, Pul-

Pulling off a Button in a rude and insolent Manner, &c.

103. This is punished the same as Assault.

104. A Man may justify the Beating of another who first assaults him, in his own Defence; also one who assaults his Wife, Father or Mother, or his Child or Servant; and so on the Contrary the Wife, Father, Mother, Child, or Servant, may justify Beating those that assault those who are so nearly related; Also in the necessary Defence of One's Goods, or Possession of his Estate, &c.

**Affray.**

105. Affray is a Fighting of two or more, to the Terror of the King's Subjects; and is punishable by Fine and Imprisonment.

**Maiden.**

106. If a Man take away a Maiden or Woman-Child unmarried, within the Age of 16 Years (tho' it be not against her Will,) without the Consent of her Father or Mother, or of the Person appointed to be Governor or Guardian, by the Father in his Life-Time, or by Will after his Death, he is to be imprisoned 2 Years; and if he has deflour'd or married her against the Will of the Father, if he is living, or against the Will of the Mother, having the Custody of such Maiden; if the Father is dead, he is to be imprisoned 2 Years; and if *she* be above 12 Years old



and under 16, and consent to such Marriage, the next of Kin of the said Child, to whom the Inheritance should descend or come after *her* Decease, shall from the Time of such Assent or Agreement enjoy all such Lands, &c. as *she* had in Possession, Reversion, or Remainder, at the Time of the Assent, during *her* Life; but this is not to prejudice any Custom concerning Orphans in *London* or other City, &c. Stat. 4. & 5 W. & Mar. c. 8. (See of forcible Marriage before.)

107. Kidnapping is the Stealing a Man, Woman or Child, and is punishable by Fine, Pillory, &c. Kidnap-  
ping.

108. Forcible Entry is, where one or more furnished with unusual Weapons do violently enter into the House or Land of another, or do use violent or threatening Words to the Terror of another, and by that Means gain the Possession; the Offender is to be fined and imprisoned, &c. Forcible  
Entry.

109. Forcible Detainer is, when one or more have entered peaceably, and detained the Possession with Force, Arms, or an unusual Number of People, or with Threatnings to defend it; the Offender is to be fined and imprisoned. Forcible  
Detainer.

110. An unlawful Assembly is, where 3 or more assemble themselves together, to do Unlawful  
Assembly.

do an unlawful Act, and Part without doing the same, or without making any Motion towards the Execution of it. (*vid. infra.*)

**Rout.**

111. A Rout is when three or more do any unlawful Act upon a common Quarrel, as when the Inhabitants of a Town break down Inclosures, pretending to have Right of Common or a Way there; or it is where three or more have met to do an unlawful Act, and have moved forward in Order to it, but Part without doing it. (*vid. infra.*)

**Riot:**

112. A Riot is, where three Persons at least do an unlawful Act of a private Nature, with Force; as when they beat a Man, hunt in his Park, Chase or Warren, cut or destroy his Corn, Grass, or other Profit, enter to take Possession of Land &c.

113. For Riots, Routs and unlawful Assemblies the Offenders are punishable by Fine and Imprisonment, Pillory, &c.

**Riding or going armed.**

114. Riding or going armed with dangerous and unlawful Weapons, to the Terror of the People; Forfeiture of Arms, Fine and Imprisonment.

**Libel.**

115. A Libel is a malicious Defamation of any Person expressed either in Print or Writing, Signs or Pictures, to asperse the Reputation of one that is alive, or

the Memory of one that is dead, and is punishable by Fine, Imprisonment, Pillory, &c.

116. *False and scandalous Tales and News*, False Tales whereby Discord may arise between the or News. King and great Men of the Realm, is punishable by Fine and Imprisonment.

117. *False Prophecies*, raising Sedition amongst the People; the Offender to forfeit 100 Pounds for first Offence, and suffer a Year's Imprisonment: And for second Offence forfeit all his Goods and Chattels, and be imprisoned for Life.

*Stat. 5 Eliz. c. 15.*

118. Thirdly, *Against Publick Trade.*

119. *Usury* is the Gain of any Thing, by Contract above the Principal or Thing lent, exacted only in Consideration of the Loan of it, or for the Forbearance of the Demand of it. *Usury.*

120. Persons taking above 5 Pounds per Cent. per Ann. forfeit 20 Pounds, with Costs of Suit, and to suffer Half a Year's Imprisonment. *Stat. 12 Ann. c. 16.*

121. *Forestalling* is the Buying or Contracting for any Merchandize, Victual, or any other Thing in the Way, coming by Land or Water to any Fair or Market, or coming from beyond Sea to any Port, &c. to be sold; or causing the same to be

be bought; or a Disswading People by Word, Letter, Message, or otherwise, from bringing such Things to Market, or perswading them to enhance the Price after they are brought thither. *Stat. 5 & 6 Ed. 6. c. 14. (vid. infra.)*

**Regrating.** 122. *Regrating* is the Buying or Obtaining in a Fair or Market any Grain, Wine, Fish, Butter, Cheese, Candles, Tallow, Sheep, Lambs, Calves, Swine, Pigg, Geese, Capons, Hens, Chickens, Pigeons, Conies, or other dead Victual brought to a Fair or Market to be sold, and selling the same again in the same Fair or Market, or in some other Fair or Market within four Miles. *Ibid. (vid. infra.)*

**Ingrossing.** 123. *Ingrossing* is the Getting into One's Possession, by buying, contracting or promising (other than by Grant or Lease of Land or Tithes) any Corn growing in the Fields, or other Grain (except Barley and Oats, to make Malt and Oat-Meal in his own House) Butter, Cheese, Fish, or other Victual whatsoever (of the like Necessity and common Use) with Intent to sell them again. *Ibid.*

124. For Forestalling, Regrating, or Ingrossing, the Offender is to forfeit for the first Offence the Goods bought, or their Value, and be imprisoned two Months;



For the second Offence double the Value, and 6 Months Imprisonment; and for the third Offence to forfeit all his Goods, be set in the Pillory, and be imprisoned at the King's Pleasure. *Stat. 5 & 6 Ed. 6.*  
 . 14.

125. But this Act does not restrain the Buying any Thing by a Fishmonger, Butcher or Poulterer, Inholder or Victualler (not forestalling,) for any Thing concerning their Trades, they retailing the same at reasonable Prices, &c.

126. Nor a Badger, Lader, Kidder, or Carrier, assigned to that Office by three Justices of the Peace, and delivering the Commodity out of his Hand within one Month after he buys it.

127. Nor to a common Drover licensed by 3 Justices, buying and selling Cattle, &c.

128. Nor the Provision made for any Town corporate, Ship, Castle, Fort, &c.

129. A *Monopoly* is an Allowance by the King, by his Grant, Commission, &c. to any Person, for the sole Buying, Selling, Making, Working or Using any Thing, whereby any Person is sought to be restrained of any Freedom that they had before, or to be hindred of their lawful Trade.

130. And

130. And the Procuring or making Use of any unlawful Monopoly, is punishable by Fine and Imprisonment, &c.

**Deceit and Cofinage.** 131. *Deceit and Cofinage* are all Practices of Defraud, or of endeavouring to defraud another of his known Right, by some artful Device, contrary to common Honesty. The Punishment is Fine, Imprisonment, Pillory, &c.

**Destroying Game.** 132. *Destroying Game* incurs different Forfeitures and Punishments, according to the different Offences, which are too numerous to be particularly mentioned in this Treatise.

**Destroying Corn.** 133. For *Destroying Corn*, Wood, Fruit-Trees, &c. the Offender to be sent to the House of Correction, &c.

**Nusances.** 134. Fourthly, *Against the Health and Ease of the Subjects*, or *Nusances of different Kinds*.

135. *Publick or Common Nusances* are Annoyances in Highways, Bridges, Rivers, Ale-Houses, Bawdy-Houses, Gaming-Houses, Stages for Rope-Dances, Mountebanks, &c. Brewing-Houses, and Melting-Houses for Chandlers, Common Scolds, Eaves-droppers, &c.

136. *Private Nusances* are by Stopping up the Light of Another's House, &c.

137. The Offender may be sued for Damages, fined, imprisoned, &c. according to the different Kinds of Nuisances.

138. These are the Chief Crimes for which Offenders may be arrested, fined, and punished, &c. To enter into every particular mentioned both in the Common and Statute Law, would be going beyond the Design of this small Treatise.

### CHAP. III.

#### *Of Arrests by Sheriffs.*

THE Sheriff is not only the proper Officer for executing all Writs and Processes in Civil Cases, (as mentioned Part I. Chap. 3. §. 1.) but he is also a principal Conservator of the Peace within the County, and may *ex Officio* ward Process of the Peace, and take surety for it; because as the King's Commission intrusts him with the Custody of the County, he has consequently by such Commission an implied Power to keep the Peace within his County.

But this Judicial Authority of the Sheriff as Conservators of the Peace of the County is seldom practised, it being usually executed by Justices of the Peace.

3. The Sheriff also may assist the Justices of the Peace of his County, by charging any Number of Men (called the *Posse Comitatus*) to attend him to suppress Riots, and such as go about to disturb the Publick Peace, and record it; and such as refuse to assist him when required may be fined and imprisoned.

## CHAP. IV.

### *Of Arrests by Coroners.*

1. **A** Coroner is another principal Conservator of the Peace within the County of which he is a Coroner, and may bind any Person to the Peace, (except where it is taken by him as Judge of his own Court for an Affray done in such Court.)

## CHAP. V.

### *Of Arrests by Command, &c. of Justices of the Peace.*

By Parol. 1. **A** R R E S T S by the Command of Justices of the Peace are either by Parol (or Word of Mouth) or by Warrant.



2. Any Justice of the Peace by Word or Mouth may authorise any Person, to arrest another that is guilty of a Breach of the Peace in his Presence, or shall be engaged in a Riot in his Absence; for,

3. By the *Stat. 34 Ed. 3. c. 1.* it is enacted, that in every County there shall be assigned for the Keeping of the Peace, one Lord, and three or four of the most worthy Men in the County, with some learned in the Law; and they shall have power to restrain Evil-doers, Rioters, and all other Barretors, and to take and chastise them, and cause them to be imprisoned and punished; and also to inquire of those that have been Pillers and Robbers beyond Sea, and go wandering, and will not labour; and to take all that they find by Indictment or by Suspicion, and put them in Prison, and to take of them that be not of good Fame Surety for their good Appearing; and also to hear and determine at the King's Suit all manner of Felonies and Trespases.

4. And it has been resolved, that if a Justice of the Peace find Persons riotously assembled, he alone, without staying his Companions, may arrest the Offenders, and bind them to their good Behaviour, or imprison them, if they do not offer good Bail; and he may also

authorise others to arrest them by a bare Verbal Command, without other Warrant, and by Force thereof the Persons commanded may pursue and arrest the Offender in his Absence as well as Presence. And if a Justice of the Peace be sick, and hear that Persons are riotously assembled, he may send his Servants to arrest them, and bring them before him; and if he hears that Persons are riotously together in a certain Place, and go thither and find none there, he may leave his Servants behind him with a Command to arrest them when they do come.

By Warrant.

5. A Justice of the Peace may grant a Warrant, to arrest an Offender for Treason, Felony, or *Præmunire*, or any other Offence against the Publick Peace.

Warrant, where to be granted.

6. And it is a general Rule, that where any Statute gives a Justice of the Peace Jurisdiction over any Offence, or Power to require a Person to do a certain Thing mentioned in the Statute, by Implication it gives a Power to the Justice to grant his Warrant to bring the Person accused of such Offence, or the Person that is compellable to do the Thing ordained by such Statute; for to what Purpose would it be, to give the Justice Authority to require any Person to do a Thing, if he had not Power, to compel

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the Person to come before him, in order to proceed therein.

7. It is said, that anciently one Justice of Peace could not legally issue his Warrant for an Offence against a Penal Statute, or other Misdemeanor, cognizable only by a Session of two or more Justices, because one Justice has not Jurisdiction of such Offence; and only those who have Jurisdiction over a Cause, can regularly award Process concerning it; but the long and continued Practice universally used by the Justices of Peace, without Control, has seemingly altered the Law in this Respect, and given them an indisputable Authority with Relation to such Arrests.

8. A Justice of the Peace (it is said) cannot justify the Granting a general Warrant, to search all suspected Houses in general for stolen Goods; for such a Warrant seems in the very Face of it to be illegal, because it would be very hard to leave it to the Discretion of a common Officer to arrest what Persons, and search what Houses he should think fit. And as a Justice of Peace cannot legally grant a Blank Warrant to arrest a single Person, leaving it to the Party to fill it up, why should he grant such a general Warrant, as might have the Effect of any

Number of Blank Warrants? And yet there is a Precedent of such general Warrant in *Dalton's Justice*, notwithstanding the Unreasonableness, and seeming Unwarrantableness of such Practice.

9. It is said, that a Warrant for the Peace or good Behaviour cannot be granted by a Justice of the Peace against a Lord of Parliament; it must be by *Subpœna* out of Chancery. But one Justice may against another.

Upon what Evidence.

10. The Practice of Justices of the Peace relating to the Evidence on which a Warrant is to be granted upon strong Suspicion of Felony or other Misdemeanor, before any Indictment has been found against him, is seemingly become a Law; but as there is no express Warrant in Law for such Practice, and the Execution of it may prove very prejudicial to the Party both in his Liberty and Reputation, a Justice cannot be too careful in this Respect; for if he grants such a Warrant groundlessly and maliciously, without such probable Cause as might induce a candid and impartial Man to suspect the Party to be guilty, he seems to be punishable not only at the Suit of the King, but also of the Party grieved.

11. Both *Coke* in his 4 *Institute* 177 and *Hale* in his *Pleas of the Crown*

13. seem to disapprove of such Warrants granted on Suspicion; and *Hawkins* in his *Pleas of the Crown*, B. 2. c. 13. §. 19. says, that the old Books seem generally to disallow all Arrests for the Suspicion of Felony made by any other Person whatsoever, except the very Person who hath the Suspicion; so it is the safest Way of proceeding for the Person that hath the Suspicion, to make the Arrest in his proper Person, and to get a Warrant from the Justice of Peace to the Constable, to keep the Peace.

12. He that demands Surety of the Peace, must make Oath before the Justice of Blows given, or that he stands in Fear of his Life, or some bodily Hurt; or that he fears that another will burn his House, &c. before the Justice can grant his Warrant.

13. A Warrant of a Justice of the Peace for an Arrest ought to be under his Hand and Seal, to set forth the Year and Day when made, and the County either in the Body or Margin; to be either in the Name of the King or the Justice; and if it be either for the Peace or Good Behaviour, it is advisable to set forth the special Case for which it is granted; but if for Treason, Felony, or other Offence of an enormous Nature,

In what Form the Warrant ought to be.



to set it forth is said to be not necessary but in any Case it seems to be rather discretionary than necessary.

14. And a Warrant may be either to bring the Offender before any Justice of the Peace of the County, or to bring him before the Justice that granted it.

15. And it may be directed to the Sheriff, Bailiff, Constable, or any indifferent Person by his Name, that is not an Officer; yet it is best to direct it to the Constable of the Precinct wherein it is to be executed.

How executed.

16. If a Bailiff or Constable be sworn and commonly known to be Officers, acting within their own Precincts, they need not shew the Offender the Warrant on an Arrest, even if he demands to see it; but they ought to tell the Substance of it.

17. But if a Warrant be directed to a private Person, or if the Officer be not sworn and commonly known; or if a sworn or known Officer act out of his own Precinct, the Warrant must be shewn if demanded by such Offender.

18. If a Sheriff has a Warrant of a Justice of Peace directed to him, he may authorise others to execute it; but if directed to any other Person, he must personally execute it, but any one may assist him.

19. And

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19. And if directed to all Constables, no one of them must execute it out of his own Precinct; but if directed to a particular Constable by Name, he may execute it in any Place within the Justice's Jurisdiction.

CHAP. VI.

Of Arrests by Mayors and Bailiffs of Towns.

1. **M**AYORS and Bailiffs of Corporations are Justices of the Peace *pro tempore*.

2. By the Statute of Northampton 2 Ed. 3. c. 3. No Man (except the King's Servants in his Presence, and his Ministers in executing of their Office, and such as be assisting them, and also upon a Cry made for Arms to keep the Peace) shall come before the King's Justices, or Ministers doing their Office, with Force, in Affray of the Country, nor go or ride armed in Fairs, Markets, nor in Presence of the Justices or other Ministers, nor elsewhere, upon Pain to forfeit their Armour to the King, and their Bodies to be committed to Prison at the King's Pleasure. And the King's Justices in

their Precincts, Sheriffs and other Ministers in their Bailwicks, Lords of Franchises and their Bailiffs, and Mayors and Bailiffs of Cities and Boroughs, and Boroughholders, and Wardens of the Peace shall have Power to execute this Act.

3. And the Justices shall inquire how such Officers and Lords have exercised their Offices in this Case, and punish them whom they find not to have done that which appertains to their Office.

4. And by Stat. 21 Jac. 1. c. 7. to any Justice of the Peace or Head-Officer in any City or Town corporate, is given Power, upon View, Confession, or Proof of one Witness, to convict any Person of Drunkenness, whereby such Person must forfeit 5 s. and for the second Offence become bound to the Good Behaviour.

5. And by Stat. 4 Jac. 1. c. 5. for Non-Payment of the said 5 s. the Offender to be set in the Stocks 6 Hours.

6. And by the Statutes 1, 4 & 21 Jac. 1. Persons that sit ripling in an Ale-House, Inn, &c. are liable to be punished by Mayors, Bailiffs, &c. who may levy 3 s. 4 d. on the Offender for every Offence, or for Non-Payment to be set in the Stocks for 4 Hours.

7. And

7. And all Justices of the Peace, Mayors, Sheriffs, Bailiffs, and other Head-Officers within every City, Town and Borough, to enter into all Places where unlawful Gaming is suspected to be used, and may imprison as well the Keepers of the same, as also the Persons there playing, till the Keeper of the Games has found Sureties to the King's Use, no longer to use such House, Game, or Place, and also the Persons there found to be bound no more to play at the said Places. *Stat. 33 Hen. 8. c. 9.*

8. If any Persons to the Number of <sup>Riots.</sup> 12, being unlawfully assembled to the Disturbance of the Peace, and being required by one Justice of the Peace, or by the Sheriff or his Under-Sheriff, or by the Mayor, Bailiff, &c. of any City, &c. by Proclamation in the King's Name, to disperse themselves, and depart to their Habitations or lawful Business, shall riotously continue together by the Space of one Hour after such Proclamation, such Continuing together to the Number aforesaid shall be Felony without the Benefit of the Clergy.

9. The Form of the Proclamation shall be in Manner following, viz. The Justices of Peace, &c. shall among the Rioters, or as near as they can safely come, command

mand Silence while Proclamation is making, and then shall openly make Proclamation in these Words, or the like

“OUR Sovereign Lord the King  
 “chargeth and commanded all Persons,  
 “being assembled, immediately to dis-  
 “perse themselves, and peaceably de-  
 “part to their Habitations, or their  
 “lawful Business, upon Pains contained  
 “in the Act made in the first Year of  
 “King George, for preventing Tumults  
 “and riotous Assemblies.”

*God save the King.*

11. And every such Justice, &c. on Notice of such unlawful Assembly, is to resort to the Place, and make Proclamation as aforesaid.

12. And if such Persons so unlawfully assembled do not disperse themselves within one Hour after Proclamation made, it shall be lawful for every Justice, Sheriff, &c. and for every High and Petty Constable, or other Peace-Officer, and for such other Persons as shall be commanded to be assisting to such Justice, &c. (who are impowered to command all his Majesty's Subjects, of Age and Ability, to be assisting) to seize such Persons, and carry them before a Justice of the Peace;



Peace; and if such Persons shall be killed or hurt by Reason of their resisting the Persons so dispersing or seizing them, such Justices, &c. shall be indemnified.

13. And if any Person shall with Force oppose, or in any Manner wilfully hinder or hurt any Person who shall begin to proclaim, whereby such Proclamation shall not be made, such Offenders shall be adjudged Felons without Benefit of the Clergy; and all Persons so unlawfully assembled to the Number of 12, to whom Proclamation ought to have been made, if the same had not been hindred, shall, if they continue together an Hour after such Hindrance, knowing thereof, be adjudged Felons without Benefit of the Clergy. *Stat. 1 Geo. 1. c. 5.*

14. And in great Towns walled, the Gates shall be closed from Sun-setting to Sun-rising, and no Man shall lodge in the Suburbs but in the Day-Time, nor in the Day-Time, without his Host will answer for him; and the Bailiffs of Towns, every Week, or at least every 5th Day, shall make Inquiry of all Persons lodged in the Suburbs; and if they find any that receive Men of whom there is Suspicion against the Peace, the Bailiffs shall do Right therein. *Stat. Winchester.*

There-

Therefore there is no Doubt, but that such Bailiffs may arrest and detain any such Stranger, found under the above Circumstances of Suspicion, till he give a good Account of himself.

## CHAP. VII.

### *Of Arrests by Constables.*

1. A Constable may arrest a Person in some Cases *ex Officio*, without Power given him by a superior Officer; and in other Cases he cannot justify an Arrest without a Warrant from a Justice of the Peace; therefore I shall endeavour to shew, how his Power differs in these Respects.

2. First, *As to Arrests by his own Authority*, My Lord Bacon in his Office of a Constable says, That if any Man will lay Murder or Felony to another's Charge, or do suspect him of Murder or Felony, he may declare it to the Constable; and the Constable ought upon such Declaration or Complaint, to carry him before the Justice: And if by common Voice or Fame any Man be suspected, the Constable of Duty ought to arrest him, and bring him before a Justice.

Without  
Warrant.

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tho' there be no Accusation or Declaration.

3. But Serjeant *Hawkins* in his Pleas of the Crown says, That as to the Justifying Arrests by the Constable's own Authority, it seems difficult to find any Case wherein a Constable is impowered to arrest a Man for Felony committed or attempted, in which a private Person might not as well be justified in doing it: See concerning Arrests by private Persons post, Chap. 9. But the chief Difference between the Power and Duty of a Constable and a Private Person, in respect of such Arrests, seems to be this, that the former has the greater Authority to demand the Assistance of others, and is liable to the severer Fine for any Neglect of that Kind, and has no sure Way to discharge himself of the Arrest of any Person apprehended by him for Felony, without bringing him before a Justice of the Peace, in order to be examined; whereas a Private Person, having made such an Arrest, needs only to deliver his Prisoner into the Hands of a Constable.

4. But yet it is said, that a Constable may not only arrest those whom he sees actually engaged in an Affray, but also to detain them, till they find Sureties of the Peace; whereas a Private Person seems

seems to have no other Power in a bare Affray, but only to stay the Affrayers till the Heat be over, and then deliver them to the Constable, and also to stop those whom he shall see coming to join either Party; and need not endanger his Life.

5. But it clearly appears, that a Constable hath not a greater Power than a Private Person, with respect to a Breach of the Peace, out of his own View; and therefore cannot justify an Arrest for any such Offence, without a Warrant from a Justice of the Peace.

By War-  
rant.

6. Secondly, *As to Arrests by Virtue of a Warrant from a Justice of the Peace.*

7. If a Constable unlawfully makes an Arrest without a Warrant, it cannot be made good by taking out a Warrant afterwards.

8. And if a Constable arrests an Offender by Virtue of a Warrant from a Justice of the Peace, and afterwards suffer him to go at large, upon his Promise to come again at such a Time and find Sureties, he cannot afterwards arrest him by Force of the same Warrant.

9. But if the Offender returns and puts himself again under the Custody of the Constable, it seems, that the Con-  
stable

## Chap. VII. in Criminal Cases.

Constable may lawfully detain him, and bring him before the Justice, in Pursuance of the Warrant.

10. For if a Person taken by Virtue of a Process in a Civil Case, and the Sheriff voluntarily permits him to escape, he may afterwards upon his Return to the Prison be kept by the Sheriff by Virtue of the same Process; unless the Plaintiff chooses rather to take Advantage against the Sheriff; surely *a fortiori* upon an Arrest for a Crime; but the Law does not seem clear as to such Escapes.

11. A Constable cannot justify any Arrest, by Virtue of a Justice of the Peace's Warrant, which expressly appears in the Face of it to be for such an Offence as the Justice has not Jurisdiction of.

12. Nor can he justify bringing the Offender before the Justice, at a Place out of a County for which he is a Justice.

13. But a Constable may and ought to execute a general Warrant to bring a Person before a Justice of the Peace, to answer such Matters as shall be objected against him on the Part of the King; for the Constable may presume that the Justice has a Jurisdiction of the Matter which he takes Cognisance of, unless the

Con-



Contrary appears; and it may often endanger the Offender's Escape, to make known the Crime he is accused of.

14. But it seems to be very questionable, whether a Constable can justify the Execution of a general Warrant to search for stolen Goods, because such Warrant seems to be illegal in the Face of it, and it would be very hard to leave it to the Discretion of the common Officer to arrest what Persons and search what Houses he thinks fit. *Vid. Chapter 6.*

15. Any Constable, or Private Person, to whom any Justice of the Peace directs his Warrant to arrest a particular Person for Felony, or any other Misdemeanor, within the Justice's Jurisdiction, may lawfully execute it, whether the Person mentioned in such Warrant be in Truth Guilty or not; and whether he were indicted for the same Offence or not, and whether any Felony were in Truth committed or not; for however the Justice himself may be punishable for granting such a Warrant without sufficient Grounds, it is reasonable, that he alone be answerable for it, and not the Person that executes it, for he is not to examine or dispute the Reasonableness of the Justice's Proceeding.

16. And tho' the ancient Books generally say, that no one can justify an Arrest upon a Suspicion of Felony, unless he himself suspect the Party, and unless the Felony were in Truth committed, they ought to be intended only of Arrests made by a Person of his own Head, or in Obedience to the Command of a Constable, or other such like ministerial Officer, and not of such as are made in Pursuance of the Warrant of a Justice of Peace; for as it seems to have been the constant and allowed Practice of late, to make out Warrants on the Suspicion of Felony, before any Indictment has been found against the Person suspected; and the same seems to be countenanced by 1 & 2 Ph. & M. c. 13. and 2 & 3 Ph. & M. c. 10. which direct in what Manner Persons brought before Justices of the Peace upon Suspicion, shall be examined, in order to their being committed or bailed.

17. If a Person be injured by an Arrest on a Justice's Warrant, he has a good Action against the Justice who granted it, if he did it maliciously of his own Head, in Order to oppress or defame the Party without any likely Ground of Suspicion; there can be no Necessity of giving a farther Remedy against the Officer who obeys the Warrant.

18. And to subject Constables to Actions for endeavouring to serve the Publick, by obeying the Precepts of those whose Officers they are, it would be a very great Discouragement to such Officers; therefore certainly no Action can be maintained against them, for an Arrest in Purviuance of a Justice of the Peace's Warrant, unless the Warrant appear to be for a Matter whereof the Justice has not Jurisdiction.

19. In *Croke's Jac. 81. Boucher's Case*, where an Officer arrests a Man by Force of a Warrant from a Magistrate for certain Causes, without shewing any Cause in particular, he cannot justify himself in an Action brought against him for such Arrest without setting forth the particular Cause in his Plea; and Mr. *Hawkins* observes, that in that very Report it seems to be allowed that such a general Warrant is good; and if so, it seems strange that the Officer should not be justified by setting forth the Truth of his Case; since if there were no good Cause to justify the Granting the Warrant, the Magistrate ought to answer for it, and not the Officer.

20. If one abuses a Constable in the Execution of his Office, he cannot commit him to Prison to remain there till

thred for the Offence, but must carry  
before a Justice, who may commit

2 *Danno Abr.* 149

21. Petty Constables are to execute  
Warrants of Justices, and not dispute  
them where the Justice has Jurisdiction,  
and the Warrant is lawful: And being  
 sworn Officers, they need not shew their  
Warrant when they come to arrest any  
e. 10 *Rep.* 76.

22. And if one Justice of the Peace di-  
rects his Warrant to a Constable, to  
bring the Person before him, to answer  
such Matters as shall be objected a-  
gainst him by another, and does not set  
forth the special Matter in the Warrant,  
the Warrant is unlawful, because it does  
not give the Offender Time and Oppor-  
tunity to find Sureties; and the Consta-  
ble, if he executes it, is liable to an  
action of false Imprisonment. 2 *Inst.*

23. If a Justice of Peace's Warrant be  
directed to a Constable by Name, com-  
manding him to execute it, though he is  
not compellable to go out of his own Pa-  
rish, yet he may, if he will, and execute it  
any Place in the County, and shall be  
justified by the Warrant for so doing;  
but if the Warrant be directed to all  
Constables, &c. generally, no Constable  
can

can execute the same out of his Precinct.  
1 *Salk.* 175. 3 *Salk.* 99.

24. It is at the Election of a Constable, to carry an Offender before any other Justice than him who issued the Warrant; if the Warrant be not special, to bring the Offender before the Justice that granted it. 5 *Rep.* 59.

25. And as to Constables in London, they are to keep the King's Peace to the utmost of their Power, to arrest Affrayers, Rioters, and such as make Contests to the Breach of the Peace, and carry them to the House of Correction or Compter of one of the Sheriffs; and in Cases of Resistance, to make Outcry on them, and pursue them from Street to Street, and from Ward to Ward, till they be arrested.

26. To search for common Nuisances in their respective Wards, being required by Scavengers, &c.

27. And upon Request to assist the Beadle and Raker in collecting their Salaries and Quarterage.

28. To present to the Lord Mayor and Ministers of the City, Defaults relating to the Ordinances of the City.

29. To certify once a Month into the Mayor's Court the Names and Surnames of all Freemen deceased; and also



of the Children of such Freemen, being Orphans.

30. And Constables are to be aiding and assisting to the Watch, and the Watch are to obey their Orders in conveying Offenders to the Compter, which is the Common Prison for Offenders for Breach of the Peace, till they are examined and punished by the Lord Mayor, &c.

31. Constables are to certify to the Lord Mayor, and Common Counsel of the City, the Names of all such Persons who shall interrupt them in the Discharge of their Offices.

32. And a Constable of *London* has Power to execute Warrants, &c. throughout the whole City, upon Occasion.

33. And such as are chosen are oblig'd to place the King's Arms, and the Arms of the City over their Doors; and if they reside in Alleys, at the End of such Alleys, towards the Streets, to signify that Constable lives there, and that they may be the more easily found when wanted.

## C H A P. VIII.

*Of Arrests by Watchmen.*

1. **B**Y the Statute of *Winchester* (13 Ed. 1.) it is enacted, that from thenceforth all Towns should be kept as it had been used in Times past, (to wit) from the *Ascension-Day* till *Michaelmas-Day* in every City, six Men shall be kept in every Gate, in every Borough 12 Men, in every Town 6 or 4, according to the Number of the Inhabitants of the Town, who are to watch the Town continually all Night, from Sun-Setting to Sun-Rising.

2. And by 5 Hen. 4. c. 3. it is enacted, that the Watch to be made upon the Sea-Coasts through the Realm, shall be made by the Number of the People in the Places, and in Manner and Form as they were wont to be made in Times past, and that in the same Case the Statute of *Winchester* be observed and kept; and that in Commissions of the Peace this Article be put in, That the Justices of Peace have Power thereof to make Inquiry in their Sessions from Time to Time, and to punish them which be found in Default, after the Tenor of the said Statute.

3. And by the said Statute of *Winchester* it is further enacted, that if any Stranger do pass by the Watch, he shall be arrested till the Morning; and if no Suspicion be found, he shall keep him safely until he be acquitted in due Manner. And if they will not obey the Arrest, they shall levy Hue and Cry upon them, and such as keep the Town shall follow with Hue and Cry with all the Town and Towns near, and so Hue and Cry shall be made from Town to Town, until they be taken, and delivered to the Sheriff: And for arresting such Strangers one shall be punished.

4. Every Justice of the Peace may cause these Night-Watches to be duly kept; which is to be composed of Men of able Bodies, and sufficiently armed: And none but Inhabitants of the same Town are compellable to watch who are bound to keep it in Turn; or find other sufficient Persons for them, on Refusal are indictable, *3c. Co. Lit.*

*6. Cro. El. 204.*

5. By *Stat. 8 Geo. 2. c. 15.* it is enacted, that the Vestry of the Parishes of *St. James's*, *St. George's*, *James* and *St. George Hanover-Square* <sup>Hanover-Square.</sup> shall meet, and appoint what Number of Watchmen they shall judge necessary in their respective Parishes, and the several

K

Wards

Wards thereof, for the Year to come and shall appoint a sufficient Number of Beadles (not exceeding one for each Ward) and shall set down at what Stands it is for the said Watchmen to be placed, and how often it is required of them to go their Rounds, how they ought to be armed, how long they are to watch, what Wages are to be given to the Watchmen and Beadles, and such other Orders as the Nature of each Service shall require.

6. And such Orders shall be given to the Constables, and one of the Constables shall attend every Night from 9 till 7, from the 29th of *September* to 30th of *March*, and from 30th of *March* till 29th of *September* from 10 till 5, and shall apprehend all Night-walkers and suspected Persons, who shall be found wandring or misbehaving themselves; and shall carry them, as soon as conveniently may be, to a Justice of the Peace of *Westminster* to be examined; and shall twice in every Night go about their Parishes, and take Notice whether the Watchmen perform their Duties; and in Case any Watchman shall misbehave himself, or neglect his Duty, the Constable shall give Notice to one of the Church-Wardens.

7. And it shall be lawful for the Watchmen, in the Absence of the Constable, to apprehend Night-Walkers and disorderly Persons, whom they shall find disturbing the Peace, or have Cause to suspect of evil Designs, and to deliver them to the Constable of the Night, who is to carry them before a Justice.

8. And by Stat. 9 Geo. 2. c. 8. for regulating the Nightly Watch and Beadles within the Parish of *St. Martin in the Fields*, within the Liberties of the City of *Westminster*, the like Powers are granted as in 8 Geo. 2. c. 15. (*supra*) for Regulating the Nightly Watch and Beadles in the Parishes of *St. James*, and *St. George Manover-Square*.

St. Martin's in the Fields.

9. But no menial or hired Servant shall be chosen a Beadle or Watchman.

10. And by Stat. 9 Geo. 2. c. 13. upon the 3d of *May* and 3d of *November* every Year, the Vestry and Inhabitants shall appoint what Number of Watchmen they think proper for the Year to come, and to be regulated in the same Manner as in *St. Martins in the Fields*. (*Vid. supra*.)

St. Paul's Covent-Garden.

11. And by Stat. 9 Geo. 2. c. 17. on the *Tuesday* in *Easter-Week*, yearly, the Vestries of the two Parishes of *St. Margaret's Westminster*, and *St. John the Evangelist*, shall meet in the Vestry-Room of

St. Margaret's Westminster.

St. John the Evangelist's.



*St. Margaret*, and appoint what Number of Watchmen they shall judge proper within each of the said Parishes, with the like Regulation of them as in *St. Paul's Covent-Garden*, ante.

St. Anne's  
Westmin-  
ster.

12. And by *Stat. 9 Geo. 2. c. 19.* for the better regulating the Nightly Watch and Beadles within the Parish of *St. Anne* within the Liberties of *Westminster*, the like Regulation as in *St. Paul's Covent-Garden*, ante.

In London.

13. And by the *Stat. 10 Geo. 2. c. 22.* the Mayor, Aldermen and Commons of the City of *London* in Common Council, shall in every Year between the first of *October* and the 20th of *November* order what Number of Watchmen and Beadles shall be kept within the several Wards for one Year, commencing from 25th *December*, and shall direct how they ought to be armed, how long they are to watch, what Wages shall be given them, and what Number of Constables shall attend every Night in each Ward; and shall make such other Regulations as the Nature of each Service shall require.

14. And the Alderman, Deputy, and Common Council-Men of each Ward, or the major Part of them, whereof the Alderman or Deputy to be one, shall, within 14 Days after the Number of

Watch-

Watchmen shall be appointed, assemble, and chuse honest and able Watchmen, and shall set down in Writing at what Stands it is fit for the Watchmen to be placed, and how often it shall be required of them to go their Rounds, and shall then make such other Regulations concerning the Watchmen and Beadles, as the Nature of each Service shall require.

15. And it shall be lawful for the Aldermen, with the Consent of their Deputies and Common Council-Men, at any Time to remove the Watchmen and appoint more, and also to make further Regulations concerning the Watchmen and Beadles, as they think fit; provided that such Regulations be not repugnant to the Regulations made by the Common Council.

16. And the Orders of the Common Council, and such Appointments and Regulations as shall be made by the Aldermen, Deputies and Common Council-Men of the respective Wards, shall be signed by the Alderman or his Deputy, and the major Part of the Common Council-Men of each Ward, and delivered to the Constables; and one or more of the Constables of each Ward, as shall be judged necessary by the Common Council, shall attend every Night by

Turns, viz. from the 10th of *March* to the 10th of *September*, from 10 till 5, and from the 10th of *September* to the 10th of *March* from 9 till 7.

17. And the Constables shall use their best Endeavours to prevent Fires, Murders, Robberies, and other Disorders.

18. And shall apprehend all Night-Walkers, Malefactors and suspected Persons, who shall be found wandring or misbehaving themselves, and carry them as soon as conveniently may be before a Justice of Peace.

19. And shall twice or oftner every Night go about their Wards, and take Notice whether all the Watchmen perform their Duties; and in Case any such Watchman misbehave himself, or neglect his Duty, the Constables shall give Notice thereof to the Alderman or his Deputy.

20. And if any Constables shall willfully neglect to attend in his Turn, or shall not come at the Hours appointed, or shall depart during the Hours appointed by this Act, or shall neglect to go about his Ward, or otherwise misbehave himself, he shall forfeit 20 s.

21. And it shall be lawful for the Watchmen, in the Absence of the Constable, to apprehend all Night-Walkers,

Male-

Malefactors, Rogues, Vagabonds, and disorderly Persons, whom they shall find disturbing the Peace, or shall have just Cause to suspect of any evil Designs, and to deliver them to the Constable, who is to carry them before a Justice of Peace.

22. And by *Stat. 10 G. 2. c. 25.* the Inhabitants of *Hatton-Garden, Saffron-Hill, and Ely-Rents*, in the County of *Middlesex*, to elect 40 Inhabitants to be Trustees, for regulating the Nightly Watch and Beadles in the said Liberty; and the Trustees to meet on the first of *Monday in November* every Year, and appoint what Number of Watchmen shall be kept in the said District for the Year ensuing; with the like Regulations as in the Parish of *St. Martin in the Fields* *Vid. ante.*

Hatton-Garden, Saffron-Hill, and Ely Rents.

23. And by the *Stat. 11 Geo. 2. c. 35.* upon the first of *June*, or within two Months after, in every Year, the Vestry of the Parish of *Christ-Church in Middlesex* shall meet, upon Notice given in the Church the *Sunday* preceding, and appoint Watchmen and Beadles; with the like Regulations as in *8 Geo. 2. c. 15. Vid. ante.*

Christ-Church in Middlesex.

## CHAP. IX.

*Of Arrests by Private Persons.**First, By the Command of the Law.*

1. **A**LL Persons whatsoever, who are present when a Felony is committed, or a dangerous Wound given, are oblig'd to apprehend the Offender; otherwise they are liable to be fined and imprisoned for their Neglect, unless they were under Age at that Time.

2. For that Reason, if any Homicide be committed, or dangerous Wound given, whether with or without Malice, or even by Misadventure or Self-Defence, in any Town, or in the Lanes or Fields thereof, in the Day-Time, and the Offender escape, by the Common Law the Town shall be amerced, and if out of Town the Hundred.

3. And since the Statute of *Winchester* ordains, that walled Towns shall be kept shut from Sun-Setting to Sun-Rising, if the Fact happen in any such Town by Day or Night, and the Offender escape, the Town shall be amerced.

4. And all private Persons are obliged also with the utmost Diligence to pursue

Hue and  
Cry.

and



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and endeavour to take all those that shall be guilty of the Crimes above mentioned out of their View, upon a Hue and Cry levied against them.

5. Hue and Cry is the Pursuit of an Offender, from Town to Town, till he be taken, which all who are present when a Felony is committed, or a dangerous Wound given, are by both the Common and Statute Law oblig'd to raise against the Offenders that escape, on Pain of Fine and Imprisonment.

6. Any Person that is set upon in the Highway to be robbed, may raise a Hue and Cry, in Pursuit of the Offender.

7. By *Stat. Winchester c. 4.* Hue and Cry may be levied upon a Stranger who does not obey the Arrest of the Watch in the Night-Time

8. And the *Stat. 21 Ed. 1.* which was made against Trespassers in Forests, Chafes, Parks, and Warrens, seems to allow the Levying thereof upon any such Offenders.

9. But if any Person raise a Hue and Cry, not having sufficient Cause, he is liable to be punished as a Disturber of the Peace.

10. The Manner of raising a Hue and Cry, is to go to the Constable of the

next Town, and tell him the Fact, and describe the Offender, and the Way he went; upon this the Constable, whether it be Day or Night, ought immediately to raise his own Town, and search for the Offender; and if he be not found, then to send the like Notice with the utmost Expedition, by Horsemen as well as Footmen, to the Constables of all the neighbouring Towns, who ought in the same Manner to search for the Offender; and also to give Notice to their neighbouring Constables, and they to the next, till the Offender be found.

11. And every Private Person is bound to assist an Officer demanding his Help for the Taking of a Felon, or the Suppressing an Affray, or Apprehending Affrayers, &c.

Secondly, *By Permission of Law.*

12. Arrests by Private Persons permitted by Law, are either of their own Authority, or by a Warrant from a Justice of the Peace.

13. And Arrests of Private Persons by their own Authority, are either on Suspicion of Treason or Felony being already done, or to prevent their being done, or in respect of inferior Offences.

14. The

14. *The Causes of Suspicion*, which will justify the Arrest of a Person that is innocent, is

15. *First*, The common Fame of the Country; but if an Action is brought for such Arrest, it must appear upon the Evidence that there was probable Ground for such Fame.

16. *Secondly*, The living a vagrant, idle, and disorderly Life, without having any visible Means to support it.

17. *Thirdly*, The being in Company with One known to be an Offender, at the Time of the Offence; or generally at other Times keeping Company with Persons of scandalous Reputations.

18. *Fourthly*, the being found in such Circumstances as induce a strong Presumption of Guilt; as for coming out of a House wherein Murder has been committed, with a bloody Knife in one's Hand; or being found in Possession of any Part of Goods stolen, without being able to give a probable Account of coming honestly by them.

19. *Fifthly*, The Behaving one's self in such a Manner as betrays a Consciousness of Guilt; as where a Man being charged with Treason or Felony, says nothing to it, but seems tacitly by his Silence to own himself guilty; or where  
a Man

a Man accused of any such Crime, upon hearing that a Warrant is taken out against him, does abscond.

20. *Sixthly*, The being pursued by a Hue and Cry.

21. An Arrest upon a Suspicion, how many Probabilities soever there be, must not be made by any Person that has not a justifiable Cause of Suspicion himself, whether it be on his own Head, or in Obedience to the Command of a Private Person, or of a Constable; the Law has this Regard to the Liberty and Reputation of every Person.

22. Any one may lawfully lay hold of another, whom he shall see upon the Point of committing Treason or Felony, or doing any Act which would manifestly endanger the Life of another, and may detain him till it may be presumed, that he has changed his Purpose.

23. No Private Person can arrest another by his own Authority for a bare Breach of the Peace, after it is over.

24. But any Private Person may arrest a common notorious Cheat, going about in the Country with false Dice, and being actually caught playing with them, in Order to have him before a Justice of the Peace; for as the Discouragement of such Offenders is for the

pu'b.

publick Good, the Restraining Private Persons from arresting them without a Warrant from a Magistrate, would be consequently prejudicial, because it would give them an Opportunity of escaping, and continuing their Offences without Punishment.

25. And for the same Reason an Arrest of an Offender, by a Private Person, for any Crime prejudicial to the Publick, seems to be justifiable.

Thirdly, *Where Private Persons are not only commanded or permitted, but also rewarded by Law.*

1. *As to Robberies in the Highways.*

26. By the Stat. 4 & 5 W. & M. c. 8. every Person who shall take any Thieves or Robbers upon the Highway, and prosecute them till they be convicted of any Robbery committed in any Highway, Passage, Field, or open Place, shall have from the Sheriff, without Fee, for every Offender convicted, 40 Pounds, within one Month after Conviction, and Demand thereof made by tendring a Certificate under the Hand of the Judge before whom such Persons shall be convicted; and in Case any Dispute shall arise be-



between the Persons apprehending the Robbers, the Judge shall in the Certificate direct the Reward to be paid amongst the Parties, in such Proportion as shall seem just.

27. And if such Sheriff shall die, or be removed before the Expiration of one Month after such Conviction and Demand made, the succeeding Sheriff shall pay the same.

28. And if Default of Payment be made by any Sheriff, such Sheriff shall forfeit to the Person to whom such Money is due, double the Sum he ought to have paid, with treble Costs.

29. And in Case any Person shall be killed by such Robbers, endeavouring to apprehend or making Pursuit after them, the Executors or Administrators, or such Persons to whom the Right of Administration of each Person killed shall belong (upon Certificate of the Judge of Assize, or the two next Justices of the Peace, which Certificate they, upon Proof before them made, are required to give without Fee) shall receive the 40 Pounds from the Sheriff, and upon Failure of Payment double the Sum to be recovered with treble Costs.

30. And all Sheriffs upon producing such Certificates, and the Receipts for

the Money, shall be allowed upon their Accounting, all Money (other than the double Sums) which they shall disburse, as aforesaid.

31. And if there shall not be Money sufficient in the Hands of such Sheriff, he shall have the same repaid by the Treasury, upon Certificate from the Clerk of the Pipe.

32. And every Person who shall apprehend, prosecute, or convict such Robbers, shall have the Horse, Furniture and Arms, Money, or other Goods of the Robber, taken with him; their Majesties Right or the Right of the Lord of the Manor, or of them lending or letting the same to hire, notwithstanding.

33. Provided that this Clause shall not take away the Right of any Person to such Horses, &c. from whom the same were feloniously taken.

34. And if any Person, being out of Prison, shall commit any Robbery, and afterwards discover two or more who shall commit any Robbery, so as they be convicted, such Discoverer shall have the Pardon of their Majesties for all Robberies; which Pardon shall be likewise a Bar to any Appeal for such Robbery.

35. And by Stat. 6 Geo. 1. c. 23. the Streets of London and Westminster, and other

other Cities, Towns and Places, shall be deemed Highways within the *Act 4 Geo. 4 W. & M. c. 8.*

36. And Certificates upon Conviction for Robbery shall be signed and paid without Fee, excepting 5s. for Writing, and that as well where the Offender plead guilty, as where they are convicted on Evidence.

37. And if any Person under Pretence of signing such Certificate or Payment of the Money, shall take any Fee otherwise than as aforesaid, such Offender shall forfeit 40 Pounds, to be recovered by the Person intitled to the Certificate.

Where  
Hundred  
answerable  
for Rob-  
bery.

*And because it is necessary for all Persons, to know in what Cases the Hundred is liable to answer for Robberies, it may not be improper to mention them in this Place.*

38. By the Statute of *Winchester Ed. 1. St. 2. c. 2.* Inquests shall be made in Towns, and after in the Hundred, and after in the Franchise and in the County, and sometimes in three or four Counties, where Felonies be committed in the Marshes of Shires, so that the Trespassers may be attained.

39. And if the County do not answer for such Misdemeanors, the People dwelling in the County shall answer for the Robberies and for the Damages, so that the whole Hundred where the Robbery happens, with the Franchises, shall answer for the Robberies.

40. And if the Robbery be done in the Division of two Hundreds, both Hundreds with the Franchises, shall answer

41. And after the Felony done, the Country shall have no longer than 40 Days to agree for the Robbery and Trespasses, or else they shall answer for the Bodies of the Offenders.

42. And by *Stat. 27 Eliz. c. 13.* the inhabitants of any Hundred (with the Franchises within the Precinct thereof) wherein Defect of fresh Suit after Hue and Cry made shall be, shall answer the Half of all such Damages, as shall be recovered against the Hundred, in which any Robbery or Felony shall be committed; and the same may be recovered in any of the Courts at *Westminster*, in the Name of the Clerk of the Peace, without naming the Name of the Clerk of the Peace.

43. And if any Clerk of the Peace shall commence any such Suit, and shall die or be removed before Recovery or  
Exe-

Execution, yet no such Action shall by such Displacing or Death be abated; but it shall be lawful for the Clerk of the Peace succeeding to prosecute every Action for the Causes aforesaid.

44. And after Execution of Damages by the Party robbed, it shall be lawful (upon Complaint made by the Party charged) for two Justices of the Peace (whereof one to be of the *Quorum*) inhabiting within the Hundred, or near the same, to assess the Towns, Parishes, Villages and Hamlets, as well of the said Hundred, as of the Liberties within the same, to an equal Contribution, for Relief of the Inhabitants against whom the Parties robbed had their Execution.

45. And the Constables and Headboroughs of every such Town, &c. shall have Power to assess every Inhabitant; and if any Inhabitant shall deny to pay the Assessment, it shall be lawful for the Constables and Headboroughs to distrain on every Person so refusing, and the Distress to sell.

46. And the Constables and Headboroughs, after they have collected their Rates, shall within 10 Days pay the same over to the Justices, to the Use of the Inhabitants for whom such Rate shall be made.



47. And the like Assessment shall be had within every Hundred, where Default of Pursuit shall be, for the Benefit of every Inhabitant that shall have any Money levied of them for the Payment of the Half of the Money recovered against the Hundred where any Robbery shall be committed.

48. And where any Robbery is committed by two, or a greater Number, and any one of the Offenders shall be apprehended by Pursuit made according to the Statutes, no Hundred or Franchise shall incur the Penalty in the Statutes.

49. And no Person robbed shall charge any Hundred, except he commence his suit within one Year after such Robbery committed.

50. And no Hue and Cry shall be allowed a lawful Hue and Cry, or Pursuit, except the same be made by Horsemen and Footmen.

51. And no Person robbed shall take any Benefit by the said Statutes, except he shall, with as much convenient Speed as may be, give Notice of the said Felony or Robbery unto some of the Inhabitants of some Town, Village, or Hamlet, near the Place.

52. Nor

52. Nor shall bring any Action upon the Statutes, except he shall, within Days before such Action brought, be examined upon Oath before some Justice of Peace, inhabiting within the Hundred or near the same, whether he do know the Parties that committed the Robbery or any of them; and if it be confessed that he does know the Parties, or any of them, he shall before the Action brought enter into Recognisance before the Justice, to prosecute the Persons known

53. And by 39 *Eliz. c. 25.* the Inhabitants of the Hundred of *Beynersh*, alias *Benburst*, may, in the Name of the Clerk of the County of *Berkshire*, recover such Sums of Money, as shall be recovered of them by the Statutes against the Inhabitants of every Hundred where Negligence or Pursuit shall be, after Notice given, or Hue and Cry brought by the same Inhabitants, of any Robbery done within the Hundred of *Beynersh*.

54. Provided that no such Remedy shall be had for the whole Money, but only in these Cases, viz. where no such Notice (as by 27 *Eliz. c. 13. vid. att.*) shall be given to the Inhabitants of the Hundred of *Beynersh*, or where the Inhabitants of the same Hundred (after such Notice, or after Hue and Cry brought

ought) shall make fresh Suit and Pursue after the Offenders with Horsemen and Footmen.

55. And by 8 Geo. 2. c. 16. no Person shall maintain any Action against any Hundred, by Virtue of the Statutes 13 Ed. 1. St. 2. and 27 Eliz. c. 13. (which were before) unless he shall, besides the Notice already required, with as much convenient Speed as may be after any Robbery on him committed, give Notice to one of the Constables of the Hundred, or to some Constable, Borsholder, Headborough, or Tithingman, of some Town, Parish or Tithing, near the Place where such Robbery shall happen, or shall give Notice in Writing at the Dwelling-house of such Constable, &c. describing such Notice, so far as the Circumstances of the Case will admit, the Feignings, and the Time and Place of the Robbery.

56. And also shall within 20 Days cause Notice to be given in the London Gazette, therein likewise describing the Feignings, and the Time and Place, together with the Goods whereof he was robbed.

57. And shall also, before Action commenced, go before the Chief Clerk or Secondary, or the Filazer of the County

ty wherein such Robbery shall happen or the Clerk of the Pleas of that Court wherein such Action is intended to be brought, or before the Sheriff of the County, and enter into a Bond to the High Constable of the Hundred in the Sum of 100 Pounds, with two Sureties to be approved of by such Chief Clerk &c. with Condition for securing to such High Constable (who is required to enter Appearance and defend such Action) the Payment of their Costs, in Case Judgment shall be against such Plaintiff.

58. And when such Bond shall be entered into before the Sheriff, such Sheriff shall certify the same to the Chief Clerk or Secondary in the Court of King's Bench, or to the Filazer of the County, in Case the Action be intended to be brought in the Common Pleas, or, if in the Court of Exchequer, to the Clerk of the Pleas; which Certificate shall be delivered by the Party robbed to the said Chief Clerk or Secondary, or to such Filazer, or Clerk of the Pleas, before any Process shall issue; and such Chief Clerk, &c. shall not take any greater Fee for making such Bond than 5 s. above the Stamp-Duties; nor shall any Sheriff take any greater Fee for making

making; nor shall such Chief Clerk, &c. take any greater Fee for filing such Certificate than 2 s. 6 d. and such Chief Clerk, &c. are to deliver over *gratis* all such Bonds to the High Constables.

59. And no Hundred shall be chargeable, if one of the Felons be apprehended within 40 Days next after Notice in the Gazette.

60. And no Process for Appearance shall be served on any Inhabitant, save only upon the High Constable of the Hundred, who is required to cause public Notice to be given in one of the principal Market-Towns on the next Market-Day; or if there be no Market-Town, then in some Parish-Church immediately after Divine Service on the Sunday next after his being served with process, and he is to enter an Appearance in the Action, and defend the same as he shall be advised.

61. And in Case the Plaintiff recover, no Process of Execution shall be served on any particular Inhabitant; but the Sheriff shall, upon Receipt of any Execution, cause the same to be shewn to two Justices of the Peace (one of the *Quorum*) residing within the Hundred, or near the same, who shall cause such Assessment to be made and levied, as by the *Stat. 27*

*Eliz.*



*Eliz. c. 13.* in which Assessment there shall be included, over and above the Costs and Damages recovered by the Plaintiff, all necessary Expences which any High Constable hath been at, in having defended such Action, Claim being made thereto by such High Constable before the Justices, upon Notice given him by the Justices.

62. And the Money so levied shall be paid over (by such Officers as by the *Stat. 27 Eliz.* are to levy the same) within 10 Days, to the Sheriff of the County, to the Use of the Plaintiff for so much as the Costs and Damages by him recovered shall amount to, and to the Use of the High Constable for so much as his Expences shall amount to, of which the High Constable shall give in an Account, and make Proof upon Oath, to the Satisfaction of the Justices, before any Taxation shall be made for reimbursing such High Constable, and shall have no further Allowance towards paying an Attorney, than what such Attorney's Bill shall be taxed at.

63. And the Money which shall be paid over to the Sheriff, shall (upon Request) be paid by him over to the Parties intitled without Deduction.

64. And no Sheriff shall be called up-  
to return such Writ of Execution, un-  
60 Days after the Writ shall be de-  
vered to the Sheriff, who is to in-  
orse the Day on which he received the  
me.

65. And if any Plaintiff in any Action  
be brought against any Hundred, shall  
Nonsuited, or discontinue, or have  
Judgment given against him, it shall be  
useful for any two Justices (such as are  
fore mentioned) upon Complaint, and  
on an Account given in by such High  
Constable, and Proof made upon Oath  
the Satisfaction of the Justices, of  
Expences necessarily laid out, to make  
uch Taxation, in order to re-imburse  
uch High Constable what he shall have  
necessarily expended in defending such  
tion, over and above the Costs taxed.

66. And in Case it shall appear upon  
ath to the Justices, that such Plaintiff  
d his Sureties are insolvent, it shall be  
useful for such Justices to make a Taxa-  
on, in the Manner directed by the  
at. 27 Eliz. c. 13. to re-imburse such  
gh Constable such taxed Costs, as by  
eason of such Insolvency he shall not  
able to recover from the Plaintiff.

67. And the Money rated for the Re-  
bursement of the High Constable, in  
L Case.

Case of Judgment given against Plaintiff, shall be paid within 10 Days after Collection to the Justices, or of them, to the Use of such High Court or Court of Record.

68. And any Person who shall apprehend such Felons within the Time limited, whereby the Hundred hath been discharged, shall upon Proof upon Oath made before such two Justices be entitled to 10 Pounds (which shall be raised upon the Hundred by a Taxation) and the Sum of 10 Pounds shall be paid upon such two Justices within 10 Days after the same shall be collected; and the Justices shall pay over the said Sum to such Persons, in such Shares as the Justices shall think reasonable; provided that such Person shall not be thereby incapable to be a Witness in such Action.

69. And the Justices, by whom the Taxation shall be made, shall appoint some reasonable Time within which the Taxations shall be levied, which Time shall not exceed 30 Days; and if the Officers, who are to levy such Taxations shall neglect to levy the same, or shall neglect to pay over the Money to the Sheriff and Justices, such Officer shall for every Neglect forfeit double the Sum

70. And every Constable, Borsholder, headborough or Tithingman to whom notice shall be given, and every Constable of the Hundred, and every Constable, &c. within the Hundred or Franchises within the Precinct thereof, where such Robbery shall happen, as soon as the same shall come to his Knowledge, shall with the utmost Expedition make such Suit and Hue and Cry after the Felons; and if any Constable, &c. shall offend in the Premises shall forfeit 5 *l*.

71. And every Forfeiture hereby incurred shall be recovered with Costs, and shall be one Moiety to the King, and the other to such Persons as shall sue for the same within 6 Months after such Forfeiture incurred.

72. And if any Action shall be commenced for any Thing done in Pursuance of this or either of the said Statutes, the Defendant may plead the general Issue.

73. And no such Action shall be brought but within 6 Months after the Thing is done.

74. And in any Action against the Hundred, any Person inhabiting within the Hundred, shall be admitted a Witness for the Hundred.

**2. As to Counterfeiters and Clippers of Coin.**

75. By 6 & 7 Will. 3. c. 17. If any Person shall apprehend any who have counterfeited the Coin, or that for Gain has diminished the same, or brought into this Kingdom any clipp'd or counterfeit Coin, and prosecute any such Persons till they be convicted, he shall have from the Sheriff for every Offender convicted 40 Pounds, without Fee, within one Month after Conviction and Demand made, by tendering a Certificate to the Sheriff, under the Hands of the Judge or Justices before whom such Offender shall be convicted, and in Case any Dispute shall arise between the Person apprehending and prosecuting such Traitors, the Judge or Justices shall in the Certificate appoint the Reward to be paid amongst the Parties, in such Proportion as shall seem just; and if Default of Payment shall be made, such Sheriff making Default shall forfeit to the Persons, to whom such Money shall be due, double the Sum he ought to have paid, to be recovered by them or their Executors &c. in any of his Majesty's Courts at Westminster, with treble Costs.



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76. And all Sheriffs, upon producing such Certificates and the Receipts for the Money, shall be allowed upon their Account all Monies which they shall disburse as aforesaid, without Fee.

77. And if there shall not be Money sufficient in the Hands of such Sheriffs, to reimburse them, they shall have the same paid by the Treasury, upon Certificate from the Clerk of the Pipe.

78. And if any Persons, being out of Prison, shall be guilty of Clipping, Coining, or diminishing the Coin, and discover such Persons who shall commit any of the said Crimes, so as two or more shall be convicted; such Discoverers shall have his Majesty's Pardon for all such Crimes; and if he be an Apprentice, he shall be free.

## 3. As to Shoplifters, &c.

79. By Stat. 10 & 11 Will. 3. cap. 23.

Every Person that shall by Day or Night, break open any Shop, Ware-House, Coach-House, Stable, privately or feloniously steal Goods of the Value of 5 s. or more (altho' such Shop &c. be not broke open, and altho' the Owners or any other Person be or be not in such Shop, &c. to be in Fear) or shall assist, hire or com-

mand any Person to commit such Offence being thereof convicted by Verdict or Confession, or being indicted shall stand mute, or will not directly answer, or shall peremptorily challenge above three and twenty of the Jurors, shall be excluded from the Benefit of the Clergy.

80. And all Persons who shall apprehend any Person guilty of the Felonies before mentioned, and prosecute him until he be convicted, such Apprehenders upon such Conviction, without Fee, shall have a Certificate under the Hands of the Justices, certifying such Conviction, and within what Parish the Felony was committed, and that such Felon was taken or discovered by the Person, &c.

81. And in Case any Dispute shall happen between any of the Persons for discovering or apprehending, touching their Right to the said Certificate, the Justices shall by their Certificate appoint the said Certificate into Shares, as to them shall seem just, which Certificate may be once assigned, and the original Proprietor of such Certificate, or the Assignee shall be discharged from all Parish and Ward-Offices, within the Parish or Ward wherein such Felony shall be committed; which Certificate shall be enrolled by the Clerk of the Peace, for which

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the Clerk of the Peace shall  
 give 1 s.

82. And if any Person having such  
 Certificate shall make Use of it to exempt  
 him from any Office, such Person shall  
 be liable to assign over the said Certificate.

83. And in Case any Person shall be  
 slain by such Felon, by endeavouring to  
 apprehend, or in making Pursuit after  
 him, the Executors or Administrators of  
 such Person slain shall have the Certifi-  
 cate.

## 4. As to Burglars, &c.

84. Stat. 5 Ann. c. 31. every Person,  
 who shall take any Persons guilty of  
 Burglary or felonious breaking and en-  
 tering any House in the Day-Time, and  
 prosecute them unto Conviction, shall  
 receive, above the Reward given by 10  
 W. 3. c. 23. (which see before) the  
 sum of 40 l. within in one Month after  
 such Conviction, to be paid by the Sheriff  
 of the County where the Felony was  
 done, without Fee, rendering a Certifi-  
 cate under the Hand of the Judges be-  
 fore whom the Conviction was, certify-  
 ing the Conviction, and in what Parish  
 the Felony was committed, and the Ta-  
 king by the Person claiming the Reward.

85. And in Cases of Dispute the Judges may appoint the said Reward to be divided as to them shall seem just.

86. And if the Sheriff die or be removed within one Month after Demand and Non-Payment, the succeeding Sheriffs shall pay the same in one Month after Demand and Certificate brought.

87. And the Sheriff making Default shall forfeit to the Person to whom such Money is due double the Money, to be recovered in any of the Courts of Record at *Westminster*, by Action of Debt, &c. with treble Costs.

88. And in Case any Person shall be killed by such Housebreaker, by endeavouring to apprehend him, the Executors or Administrators, or Person to whom the Right of Administration shall belong, upon Certificate delivered under the Hand and Seal of the Judge of Assize of the County where the Fact was done, or the two next Justices of the Peace, of the Person's being so killed, shall receive 40*l.* from the Sheriff where the Fact was done; and upon Failure of Payment, double the 40 Pounds to be recovered, with treble Costs, as aforesaid.

89. Upon producing the Certificates and Receipts, the Sheriffs shall be allowed

upon

upon their Accounts all Monies paid, as  
fore said, other than the Penalties; and  
if there be not sufficient in the Hands of  
such Sheriff, he shall be repaid by the  
Treasury, upon Certificate of the Clerk  
of the Pipe.

90. And if any Person being out of  
Prison, shall commit such Burglary or  
Felony, and after discover two who shall  
have committed such Burglaries or Felo-  
nies, so as they be convicted, such  
Discoverer shall have 40 l. and the other  
Advantages given to such Taker or Pro-  
secutor, and shall be intitled to a Pardon  
of Burglaries and Felonies, except Mur-  
der and Treason, which Pardon shall be  
a Bar to any Appeal for the same.

91. And if any principal Felon cannot  
be taken so as to be convicted, yet the Per-  
son buying or receiving knowingly may  
be prosecuted for a Misdemeanor, to be  
punished by Fine and Imprisonment, or  
other corporal Punishment, which shall  
exempt the Offender from being punished  
as accessory, if the Principal be after-  
wards convicted.

92. And the Judge, before whom such  
Felon and Housebreakers shall be con-  
victed, shall settle the Rights and Shares  
of Persons entitled to Certificates, and  
deliver the Certificates without Fee, be-



fore the End of such Assises or Sessions wherein such Conviction shall be had.

93. And the Rewards hereby granted being generally to be paid in *London* and *Middlesex* by the Under-Sheriffs; no Sheriff of *London* and *Middlesex* shall take any Sum or Present for the Execution of the Place of Under-Sheriff, nor oblige his Under-Sheriff to be at any Expence in Relation to the said Place, which hath been usually paid by the High-Sheriff; except the Rewards given by any Act for the Apprehending Highwaymen, Clippers, Coiners, Housebreakers, and the Fees for passing such High Sheriff's Accounts in the Exchequer, and such other Disbursements as have been customarily sustained by the Under-Sheriff.

5. *As to the Taking Rewards, for helping Persons to their stolen Goods.*

94. And by Stat. 6 Geo. 1. c. 23. whoever shall discover, apprehend and prosecute to Conviction of Felony without the Benefit of the Clergy, any Person for taking Reward to help Persons to their stolen Goods, (such Persons not having apprehended the Felon who stole the same, and brought him to Trial, and given Evidence against him) shall be intitled

entitled to a Reward of 40 l. for every Offender so convicted, and shall have the like Certificate as Persons may be entitled to for apprehending, &c. of Highwaymen.

95. And the Reward of 40 l. for apprehending and convicting any Person for Burglary shall be paid without Deduction.

6. *As to Persons being armed, disguised, &c.*

96. And by Stat. 9 Geo. 1. c. 22. if any Persons being armed with Swords, Fire-Arms, or other offensive Weapons, and having their Faces blacked, or being otherwise disguised, shall appear in any Forest, Chase, Park, Paddock or Grounds inclosed wherein Deer are usually kept, or in any Highway, Heath, Common or Down; or shall unlawfully and wilfully hunt, wound, kill or steal any red or fallow Deer, or rob any Warren or Place where Conies or Hares are usually kept; or steal or take Fish out of any River or Pond; or if any Persons shall unlawfully wilfully hunt, &c. any red or fallow Deer, kept in any Places in any of his Majesty's Forests or Chases inclosed with Fences, or in any Park, &c. inclosed where Deer are

are usually kept, or shall unlawfully and maliciously kill, maim, or wound any Cattle, or cut down or destroy any Trees planted in any Avenue, or growing in any Orchard, Garden, or Plantation for Ornament, Shelter or Profit; or shall set Fire to any House, Barn or Outhouse, or to any Hovel, Cock, Mow or Stack of Corn, Straw, Hay or Wood; or shall wilfully and maliciously shoot at any Person in any Dwelling-House or other Place; or shall knowingly send any Letter without a Name subscribed, or signed with a fictitious Name, demanding Money, Venison, or other valuable Thing, or shall forcibly rescue any Person, being lawfully in Custody of an Officer, or of any other Person, for any of the said Offences; or if any Person shall, by Gift or Promise of Reward, procure any other to join with him in any such unlawful Act: Every Person so offending, being convicted, shall be guilty of Felony, and shall suffer Death without Benefit of the Clergy.

97. And if any Person shall be charged with any of the said Offences before two Justices of the County where the same were committed, by Information of one credible Person on Oath by him subscribed, such Justices shall certify such In-

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formation to one of the principal Secretaries of State, who is to lay the same before his Majesty in Council; whereupon his Majesty may make his Order in Council commanding such Offender to surrender himself within 40 Days to the Justices of the King's Bench, or to a Justice of the Peace, to answer the Offences wherewith he shall stand charged; which Order shall be printed in the next *London Gazette*, and transmitted to the Sheriff of the County where the Offence shall be committed, and shall within 6 Days after the Receipt thereof be proclaimed by him or his Officers, between 10 in the Morning, and 2 in the Afternoon, in the Market-Places, on the Market-Days, of two Market-Towns in the County, near the Place where such Offence was committed; and a Copy of the Order shall be affixed in some publick Place in such Market-Towns; and if such Offender shall not surrender pursuant to such Order, he shall be deemed convicted and attained of Felony, and shall suffer Death without Benefit of the Clergy; and the Court of *King's Bench*, or the Justices of *Oyer and Terminer*, or *Gaol-Delivery* for the County where the Offence is sworn in such Information to have been committed, upon producing such

such Order in Council, under the Seal of the Council, may award Execution of such Offender, as if he had been convicted in the said Court, &c.

98. And every Person who, after the Time appointed for the Surrender of any Person so charged, shall conceal, abet, or succour him, knowing him to be so charged and required to surrender, being convicted thereof, shall suffer Death as a Felon without the Benefit of Clergy.

99. But nothing in this Act shall hinder any Judge, Justice of Peace, or Minister of Justice, from apprehending such Offenders, against whom such Information shall be given, and such Order in Council made; and if such Offenders be taken before the Time expired, no further Proceedings shall be had upon such Order in Council.

100. And the Inhabitants of every Hundred in *England* shall make Satisfaction to all Persons, their Executors, &c. for Damages which they shall have sustained by killing or maiming of Cattle, destroying of Trees, setting Fire to any House, Barn, &c. done by any Offender against this Act; and Persons sustaining such Damages are enabled to sue for the same, the Sum to be recovered not exceeding 200 Pounds against the Inhabitants of

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the Hundred; and if such Persons shall recover and sue out Execution against any of such Inhabitants, all the other Inhabitants shall be ratably taxed towards Contribution for Relief of such Inhabitant; which Tax shall be raised as Damages recovered against the Inhabitants of Hundreds in Cases of Robbery, by the 27 Eliz. c. 13. for the following Hue and Cry.

101. And no Persons shall recover Damages by this Act, unless they or their Servants, within two Days after such Damage done, give Notice of such Offence to some of the Inhabitants near the Place where such Fact shall be committed; and shall within 4 Days after such Notice give in their Examination upon Oath before any Justice of the Peace of the County, &c. inhabiting within or near the said Hundred, whether they know the Persons that committed such Fact, and if they confess that they know the Persons, or any of them, they shall be bound by Recognisance to prosecute the Offenders.

102. And where any one of the Offenders shall be apprehended and convicted within 6 Months after the Offence, no Hundred shall be liable.

103. And no Person, who shall sustain any Damage contrary to this Act, shall be enabled to sue the Hundred, except he  
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commence his Action within one Year after the Offence.

104. And any Justice of Peace may issue his Warrant to any Constable, or other Peace-Officers, to enter into any House, to search for Venison stolen or unlawfully taken, as for stolen Goods.

105. And if any Person shall apprehend, or cause to be convicted, any of the Offenders abovementioned, and shall be killed, or wounded, so as to lose an Eye, or the Use of any Limb, in apprehending such Offenders, on Proof thereof at the Quarter-Sessions for the County, &c. where the Offence was committed, the Justices shall give a Certificate thereof to the Person so wounded, or the Executors, &c. of the Party killed, which shall intitle him to receive of the Sheriff of the County 50 Pounds, to be allowed the Sheriff in passing his Accounts; which 50 Pounds the Sheriff is to pay within 30 Days from the Day on which the Certificate shall be shewn him, on Forfeiture of 10 l. to the Person to whom the Certificate is given; for which 10 l. as well as the 50 l. such Person may bring his Action upon the Case against the Sheriff, as for Money had and received to his Use.

106. And every Offence against this Act may be inquired of and tried in any County in England.

107. And by 10 Geo. 2. c. 32. all the Provisions made in the Act 9 G. 1. c. 22. (called the Black Act, which see before) for bringing Offenders to Justice, and the Persons who shall conceal, abet or succour such Offenders, and for making Amends for Damages, and for Trial of any Indictment or Information, for any Offence against the said Act, shall, during the Continuance of the said Act, extend to all Offences by unlawfully and maliciously breaking or cutting down the Bank of any River or Sea-Bank, or by unlawfully and maliciously cutting Hop-Binds, or by wilfully and maliciously setting on Fire any Delph of Coal.

CHAP. X.

*Of opposing, preventing and flying from Arrests.*

1. IF a Person opposes one who lawfully endeavours to arrest another for Treason, and he knows the Party to have been guilty, he is thereby guilty of Treason; and he who so opposes an Arrest for Felony, is an Accessory to the Felony.

2. And

2. And whoever knows a Person to have committed any such Crime, receives and comforts him, and endeavours to favour and aid him in making his Escape, thereby becomes a Principal in the Case of Treason, and an Accessory in the Case of Felony, tho' he use no Force in giving such Assistance to the Offender.

3. But if any Person knowing another to have been guilty of such a Crime, barely receive him, and permit him to escape, without giving him any Manner of Advice, Assistance or Encouragement in it, as by directing him how to do it in the safest Manner, or furnishing him with Money, Provisions or other Necessaries, he is guilty of a high Misdemeanor only, but no Capital Offence.

4. And if the Party himself flies from an Arrest, he is not thereby guilty of a Capital Offence, but he is liable to forfeit his Goods, when such Flight is found against him.

C H A P. XI.

*Of breaking open Doors, to arrest  
Offenders.*

1. **N**O one can justify the Breaking open another's Door to make an Arrest, unless he first signify to those in the House the Cause of his Coming, and request them to give him Admittance; for the Law never allows such Extremities but in Cases of Necessity.

2. But if a Person, authorised to arrest an Offender that is sheltered in a House, is denied to enter quietly into it, to take the Offender, then he may justify the Breaking open the Doors in the following Instances.

3. *First*, On a *Capias* grounded upon an Indictment for any Crime whatsoever.

4. *Secondly*, Upon a *Capias* from the King's Bench or Chancery, to compel a Man to find Sureties for the Peace or good Behaviour, or upon a Warrant from a Justice of the Peace for that Purpose.

5. *Thirdly*, Upon a *Capias Utlagatum*, or *Capias pro fine* in any Action.

6. *Fourthly*, Upon a Warrant of a Justice of the Peace for the Levying a Forfeiture in Execution of a Judgment or  
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Conviction for it grounded on any Statute which gives the Whole, or but Part of such Forfeiture to the King, and authorises the Justices of the Peace to give such Judgment or Conviction for it.

7. *Fifthly*, Where a forcible Entry or Detainer is either found by Inquisition before Justices of Peace, or appears upon their View.

8. *Sixthly*, Where one known to have committed a Treason or Felony, or to have given another a dangerous Wound, is pursued either with or without a Warrant, by a Constable or private Person; but not where one lies under a probable Suspicion only.

9. *Seventhly*, Where an Affray is made in a House in the View or Hearing of a Constable; or where those who have made an Affray in his Presence fly to a House, and are immediately pursued by him, and he is not suffered to enter, in order to suppress the Affray in the first Case, or to apprehend the Affrayers in either Case.

10. *Eighthly*, Wherever a Person is lawfully arrested for any Cause, and afterwards escapes, and shelters himself in a House.

11. *Ninthly*, By Stat. 3 & 4 Jac. I. upon any lawful Writ, Warrant or Process

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cess awarded to any Sheriff or other Officer, for the Taking of any Popish Recusant, standing excommunicated for such Recusancy, it is lawful, if need be, to break open any House.

12. *Tenthly*, If an Officer enter into a House to serve a Warrant, and the Doors of the House be locked upon him, being in the House; he or his Friends may justify breaking them open, in order to regain his Liberty; for even in the Execution of Civil Process, the Law allows the like Liberty.

C H A P. XII.

*Of Bail.*

**W** Herever a Person is brought before a Justice of the Peace, upon an Accusation of Treason or Felony, he must be either bailed or committed, unless it plainly appears, that no such Crime was committed.

Of sufficient Bail.

2. And no Person ought in any Case to be bailed for Felony by less than two; and it is the Practice of the King's Bench, not to admit any Person to Bail upon a *Habeas Corpus* on a Commitment for Treason or Felony without four Sureties.

3. Care ought to be taken that every one of the Bail be of Ability sufficient to answer the Sum in which they are bound, which

which ought never to be less for a Capital Crime than 40 Pounds, but may be as much higher as the Justices shall think fit to require, upon Consideration of the Ability and Quality of the Prisoner, and the Nature of the Offence.

4. And the Person that takes the Bail may examine them on their Oaths concerning their Sufficiency, if it seems doubtful, whether the Persons who offer themselves to be Sureties be able to answer the Sum required.

5. And if a Prisoner be bailed by insufficient Persons, either the Person who suffered such Bail, or any other who has Power to bail him, may require the Offender to find better Sureties, and to enter into a new Recognisance, and on Refusal may commit him.

6. But Justices must be careful in not demanding excessive Bail, for that is looked upon as a great Grievance.

7. And where a Sheriff, or a Justice of Peace admits any Person to bail for Felony, with insufficient Sureties, and he does not afterwards appear according to the Recognisance, the Justices of Assize may fine them at their Discretion.

8. To take Bail for a Person that is notailable, is punishable by the Common Law, as for a negligent Escape. *Vi postea.*

Of denying Bail.

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9. And by Statute *Westminster* 1. c. 15. if a Sheriff, or any other, let any go at large by Surety, that is not replevisable, if he be Sheriff, or Constable, or any other Bailiff of Fee, which hath Keeping of Prisons, and be thereof attainted, he shall lose his Fee and Office for ever. And if the Under-Sheriff, Constable or Bailiff of such as have Fee for Keeping of Prisons, do it contrary to the Will of his Lord, or any other Bailiff being not of Fee, they shall have three Years Imprisonment, and make Fine at the King's Pleasure.

10. And by the Statute *De Finibus levatis*, c. 3. the Justices of Assise, when they deliver the Gaols, &c. shall inquire if Sheriffs, or any other, have let out by Replevin Prisoners not replevisable, or have offended in any Thing contrary to the Statute of *Westminster* 1. and whom they find guilty shall chasten and punish according to the said Statute.

11. And by *Stat. 4 Ed. 3. c. 2.* at the Time of the Assignment of Keepers of the Peace, Mention shall be made, that such as shall be indicted or taken by them, shall not be let to Mainprise by the Sheriffs, nor other Ministers, if they be not mainpernable by Law; and none who are indicted shall be delivered but  
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by the Common Law. And the Justices assigned to deliver the Gaols shall have Power to inquire of Sheriffs, Gaolers, and others, in whose Ward such Persons indicted shall be, if they make Deliverance, or let to Mainprise any so indicted, which be not mainpernable; and to punish the said Sheriffs, Gaolers, and others, if they do any Thing against the said Act.

12. And by *Stat. 1 & 2 Ph. & Mar.*  
 13. no Justice or Justices of Peace shall let to Bail or Mainprise any Person or Persons which for any Offence or Offences, by them or any of them committed, be declared not to be replevied or bailed, or be forbidden to be replevied or bailed, by the Statute *Westminster 1.* And the Justices of Gaol-Delivery of the Place where such Justices of the Peace shall be guilty of such Offence, upon due Proof thereof, by Examination before them, shall for every such Offence set such Fine on every such Justice, as the same Justices of Gaol-Delivery shall think meet, &c.

13. And a Justice of the Peace will not be excused for admitting a Person to Bail, who was committed for a Cause not bailable by Law, because he did not know that the Person was committed for such a Crime; for he ought to inform himself of the real Cause of the Commitment.



14. And yet the Denying, Delaying or Obstructing Bail, where it ought to be granted is a Misdemeanor, punishable not only by an Action at the Suit of the Person imprisoned, but also by Indictment at the King's Suit.

15. But the Person who has Power to let another to Bail, is not bound to demand of him to find his Sureties, and to forbear committing him till he shall refuse to find them; but he may justify committing the Party, unless he offer his Sureties himself.

16. By *Stat. De Finibus, c. 3.* if any withhold Prisoners replevisable, after they have offered sufficient Surety, he shall be amerced. And if he take any Reward for the Deliverance of such, he shall pay double to the Prisoner, and shall be in the King's Mercy.

17. And by the *Habeas Corpus Act* 31 Car. 2. when any Person shall bring a *Habeas Corpus*, directed to any Person whatsoever, for any Person in his Custody, and the said Writ shall be served upon the said Officer, or left at the Gaol with any of the Under-Officers, &c. the said Officer, &c. shall, within three Days after such Service (unless the Commitment were for Treason or Felony plainly and specially expressed in the Warrant of Commitment) upon Payment or Tender

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of the Charges of bringing the said Prisoner, to be ascertained by the Judge of Court that awarded the same, and indorsed on the said Writ, not exceeding 12 *d.* per Mile, and on Security given by his own Bond, to pay the Charges of carrying back the Prisoner if he should be remanded, and that he will not make any Escape by the Way, make Return on such Writ, and bring or cause to be brought the Body of the Party so committed, or restrained, unto or before the Lord Chancellor, or Lord Keeper, or the Judges or Barons of the Court from which the Writ shall issue, or such other Person before whom the Writ shall be returnable, according to the Command thereof, and shall then likewise certify the true Causes of his Detainer or Imprisonment, unless the Commitment be in a Place beyond 20 Miles distant, and not above 100 Miles, then within 10 Days; and if beyond 100 Miles, then within 20 Days. And if any Person shall be committed or detained for any Crime (unless for Treason or Felony) plainly expressed in the Warrant of Commitment, in the Vacation-time, it shall be lawful for such Person so committed or detained (other than Persons convicted or in legal Process) or any one on his Behalf, to complain to the Lord

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Chancellor, or Lord Keeper, or any Justice of either Bench, or Baron of the Exchequer of the Degree of the Coif; and the said Lord Chancellor, &c. on View of the Copy of the Warrant of Commitment, or otherwise on Oath that it was denied, are authorised and required on Request in Writing, by such person, or any in his Behalf, attested and subscribed by two Witnesses, who were present at the Delivery of the same, to grant a *Habeas Corpus* to be directed to the Officer in whose Custody the Party shall be, returnable immediately; and on Service thereof, as aforesaid, the Officer &c. shall within the Times before limited bring him before the said Lord Chancellor, &c. before whom the Writ is returnable; and in Case of his Absence before any other of them, with the Return of the said Writ, and the true Causes of the Commitment and Detainer. And thereupon, within two Days after the Party shall be brought before them, the said Lord Chancellor, Justice or Baron, before whom the Prisoner shall be brought, shall discharge the said Prisoner from his Imprisonment, taking his Recognisance with one or more Sureties, in any Sum according to their Discretions, (having Regard to the Quality of the Prisoner

and Nature of the Offence,) for his Appearance in the King's Bench the Term following, or in such other Court where in the Offence is properly cognisable, as the Case shall require; and then shall certify the said Writ with the Return thereof, and the Recognisance into such Court; unless it be made appear to the Lord Chancellor, &c. that the Party committed is detained upon a legal Process, Order or Warrant, out of some Court that has Jurisdiction of Criminal Matters; or by some Warrant signed and sealed with the Hand and Seal of any of the said Justices or Barons, or some Justice or Justices of the Peace, for such Matters or Offences, for which by Law the Prisoner is not bailable. Provided, that if any Person shall have wilfully neglected to pray a *Habeas Corpus* for two whole Terms after his Imprisonment, he shall not have one in the Vacation. And if any Person committed for Treason or Felony, plainly expressed in the Warrant of Commitment; upon his Prayer or Petition in open Court the first Week of the Term, or the first Day of the Sessions of Oyer and Terminer, or general Gaol-Delivery, to be brought to his Trial, shall not be indicted sometime in the next Term, Sessions of Oyer and Terminer,

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## Chap. XII. in Criminal Cases.

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or general Gaol-Delivery after such Commitment, the Justices of the said Courts shall, upon Motion in open Court, the last Day of the Term or Sessions, set at Liberty the Prisoner upon Bail; unless it appear upon Oath, that the Witnesses for the King could not be produced the same Term, &c. And if such Prisoner, upon his Prayer, &c. shall not be indicted and tried the second Term or Sessions, he shall be discharged from his Imprisonment.

18. *By a Sheriff*, Bail might be granted on Suspicion of Felony, or other Offenceailable, where the Indictment was in his Tourn; but not where the Indictment was before Justices of Peace. But now it seems the Sheriff has lost his Power by *Stat. Ed. 4. c. 2.* Where Bail is grantable.

19. Bail is grantable by the Sheriff on the Writs of *Odio & Atia*, *Mainprise*, and *Homine replegiando*.

20. *By Justices of Peace*, Bail by the Common Law may be granted, where they have Jurisdiction of the Crime, and the Party is indicted before them, upon such Circumstances as other Courts might do; for so far as any Persons are Judges of a Crime, so far they have Power of bailing a Person indicted before them for such Crime. Therefore two Justices (one of the *Quorum*) may bail Persons in-

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dicted



dicted before the Sessions of Justices of Peace, because any two such Justices may hear and determine the Indictments. And it has been held, that any one Justice of the Peace has the like Power in Relation to Persons so indicted for any bailable Crime under the Degree of Felony.

21. And by the *Stat. 1 Rich. 3. c. 3.* every Justice of Peace may at his Discretion let such Persons as are arrested and imprisoned on Suspicion of Felony, to Bail or Mainprise in the like Form as tho' the same Persons were indicted thereof of Record before the Justices at their Sessions.

22. But by *Stat. Westminster 3 Hen. 7. c. 3.* the Justices of the Peace, or two of them at the least, (one of the *Quorum*) may let Persons to Bail or Mainprise. And the Statute aforesaid, giving Authority and Power to one Justice by himself, be in that Behalf of no Effect.

23. And by *Stat. 1 & 2 Ph. & Mar. c. 13.* no Justice, or Justices of Peace, shall let to Bail or Mainprise any such Person or Persons, which for any Offence or Offences, by them or any of them committed, be declared not to be replevied, or be forbidden to be replevied or bailed by the abovementioned Statute of *Westminster*. And any Person arrested for

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For Manslaughter or Felony, or Suspicion of Manslaughter or Felony, being bailable by Law, shall not be let to Bail or Mainprise by any Justices of the Peace, if it be not in open Sessions, except it be by two Justices of the Peace at the least (one of the *Quorum*,) and the same Justices to be present together at the Time of the said Bailment or Mainprise, provided that Justices of Peace and Coroners, in *London* and *Middlesex*, and in other Cities, Boroughs, and Towns corporate, shall let to Bail Felons and Prisoners in such Manner as they had been before accustomed.

24. *Justices of Gao'-Delivery* may bail any Person convicted before them of Homicide by Misadventure, or in Self-Defence, the better to enable him to purchase his Pardon, also Persons indicted or appealed for any other Crime.

25. *The Courts of Westminster-Hall* may grant Bail in a great Variety of Cases, for which I refer the Reader to *Hawkins's Pleas of the Crown*, Book 2. c. 15. §. 66, &c.

26. By the *Stat. Westminster 1. cap. 15.* Who may be bailed.  
Persons outlawed, those that have abjured the Realm, Approvers, such as are taken with the Manner, Prison-breakers, Thieves openly defamed and known, Appellees by Provers during the Life of such Provers,

*House-burners, Counterfeiters of the King's Seal or Coin, excommunicated Persons (taken upon the Certificate of the Bishop) manifest Offenders, Traitors against the King's Person, are not repleviable by common Writ, or without Writ.*

27. *Persons outlawed cannot be bailed, because they are attainted in Law, for the Intendment of the Law in admitting Persons to Bail is, because it is uncertain whether the Party be guilty or no; which cannot be said when one is attainted. But a Person attainted by Outlawry of any Felony may appear in Person and plead *Misnomer*, or alledge Error in Avoidance of the Outlawry, be it on Indictment or Appeal, and the King's Bench may bail him. Thus one cannot be bailed if he is attainted by Verdict as well as by Outlawry.*

28. *Such as are taken with the Manner.* For in this Case *non stat indifferenter* whether the Party is guilty or no, being taken with the *Manner* or *Mainer*, (that is) with the Thing stolen as it were in his Hand. The same Law is for *notorious Thieves*, and open and *manifest Offenders*.

29. *Prison-breakers.* For it is presumed, that he will never fly or break Prison that is innocent.

30. *Manifest Offenders.* As if one is indicted and imprisoned for a Riot, &c.

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31. And by the same *Statute*, those that are indicted for Larceny by Inquests taken before Sheriffs or Bailiffs, by their Office, or for some light Suspicion, or for Petty Larceny, not being before guilty of other Larceny, accessory to any Felony, or accused of Trespas, may be let to Bail before the Sheriff by good Sureties; for which the Sheriff shall be answerable.

32. All *Accessories* before and after the Fact are bailable.

33. And *Principals* suspected only of Burglary or Robbery, though indicted, may be bailed.

34. And Persons indicted of Petty Larceny are bailable.

35. And therefore all Offences below Felony are bailable, except ousted by Statute, or unless Judgment be given.

36. And he that has dangerously hurt another may go under Bail till the Party is dead.

37. By *Stat. 23 Hen. 6. c. 10.* Sheriffs shall not admit to Bail such as are in Prison by Condemnation, Execution, *Capias Utlagatum*, Excommunication, Surety of the Peace, or committed by the special Command of a Justice, and Vagabonds refusing to serve.

38. Bail is also taken away by particular Statutes in a great Variety of Cases,

too numerous to be particularly mentioned in this Treatise.

## C H A P. XIII.

*Of Escapes suffered by Officers.*

Escape,  
what is so.

1. **B**EFORE any Officer can be charged with an Escape,

2. There must be an actual Arrest made.

3. And such Arrest must be also justifiable; for if it be for a supposed Crime, where no Crime was committed, and the Party neither indicted nor appealed; or for such a slight Suspicion of an actual Crime, and by such an irregular *Mittimus* as will neither justify the Arrest nor Imprisonment, the Officer is not guilty of an Escape, if he suffers the Prisoner to go at large. And it is a general Rule, that whenever an Imprisonment is so far irregular, that it will be no Offence in the Prisoner to break from it by Force, it is no Offence in the Officer to suffer him to escape.

4. The Imprisonment must also be for a Criminal Matter.

5. And so must the Continuance at the Time of the Escape be grounded on that Satisfaction, which the publick Justice demands for such Crimes; for if  
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a Prisoner be acquitted on paying his Fees, it is not criminal to suffer him to escape.

6. In some Cases it is an Escape to suffer a Prisoner to have greater Liberty than by Law he ought to have; as to admit a Person to Bail who is not bailable, &c.

7. If a Gaoler so closely pursues a Prisoner who flies from him, that he retake him without losing Sight of him, such a Flight does not amount to an Escape.

Of retaking a Prisoner.

8. If a Prisoner be rescued by Enemies, it is not an Escape in the Gaoler, but it would be if rescued by Subjects, because there is a legal Remedy against them.

9. And if an Officer makes a fresh Pursuit after a Prisoner who has escaped through his Negligence, he may retake him at any Time after, whether he find him in the same or in a different County; and it is said, that an Officer who has negligently suffered a Prisoner to escape, may retake him wherever he finds him, without mentioning any fresh Pursuit.

10. But where a Gaoler has voluntarily suffered a Prisoner to escape, he can no more justify to retake him, than if he had never had him in his Custody before,  
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because by his own free Consent he has admitted, that he had nothing to do with him.

11. And where a Prisoner by the Negligence of his Keeper, gets so far out of his Power, that the Keeper loses Sight of him, the Keeper is fineable at the Discretion of the Court, notwithstanding he retook him immediately after.

12. But in an Action against a Gaoler, for suffering one arrested in a Civil Action to escape, 'tis a good Excuse for the Gaoler, that before the Action brought he retook the Prisoner upon fresh Suit, which is well maintained by shewing that he pursued him immediately after Notice of the Escape, tho' it were some Hours after it, and retook him.

13. Yet it does not follow from thence, that the like Excuse will serve for the negligent Escape of a Criminal, because this is an Offence against the Publick; and the other is only a private Damage to the Party.

14. *A voluntary Escape* amounts to the same Kind of Crime as the Party was guilty of, and for which he was in Custody, and punishable in the same Degree, whether it be Treason, Felony, or Trespas; and whether the Party offending was actually committed to some Gaol, or under

under an Arrest only, and not committed; and whether he was attainted, or only accused of such Crime, and neither indicted nor appealed: But *see* *post.* 16.

15. But no Escape can amount to a Capital Offence, unless the Cause for which the Party was committed were actually such at the Time of the Escape; and therefore, if a Gaoler suffer one to escape who is committed for having given a dangerous Wound to another, who afterwards dies of such Wound, yet he is not guilty of Felony, for the Offence of the Prisoner was only a Trespass at the Time of the Escape.

16. A Person that suffers one who is in his Custody for Felony to escape, cannot be arraigned for such Escape as for a Felony, until the Principal be attainted; for he who suffers such Escape is not punishable in this Degree, but only as an Accessory to the Felony; and it is a Rule that no Accessory ought to be tried till the Principal be attainted; yet one accused of such an Escape may be indicted and tried for a Misprision, before the Attainder of the principal Offender; for whether the Offender was guilty or not, it is a high Contempt to suffer him to escape.

17. But

17. But if a Person committed for High Treason was actually guilty, the Escape is immediately punishable as High Treason also, whether the Person that escaped be ever convicted or not; for there are no Accessories in High Treason, but all who assist the Person guilty of such a Crime, in such a Manner as would make them Accessories to a Felony, are accounted Principals in Treason.

18. No one is punishable in this Degree for a Voluntary Escape, but him that is actually guilty of it; so the principal Gaoler is only fineable for a Voluntary Escape suffered by his Deputy, for no one shall suffer capitally for the Crime of another.

19. *A negligent Escape* is punishable both by the Common and Statute Law.

20. *By the Common Law*, whoever in Fact occupies the Office of Gaoler is liable to answer for such an Escape.

21. And the Sheriff is as answerable for an Escape suffered by his Bailiff as by himself, and the Court may charge either the Sheriff or Bailiff for it.

22. And if a Deputy Gaoler be not sufficient to answer a negligent Escape, his Principal must answer for him.

23. Where a Person is found guilty upon an Indictment, or Presentment,

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a negligent Escape of a Criminal actually in his Custody, he is to be condemned in a certain Sum to be paid to the King.

24. The Penalty by the Common Law for suffering a negligent Escape of a Person attainted was of Course 100 *l.* and of a Person indicted and not attainted 5 *l.* but if neither attainted nor indicted, at the Discretion of the Court; and if the Party had escaped twice, the Penalties were to be doubled, but the Forfeiture was to be no greater for suffering a Prisoner, committed on two several Accusations, to escape, than if he had been committed only on one.

25. By Stat. 19 Hen. 7. c. 10. for every negligent Escape from any Sheriff having the Keeping of any Gaol, or from any Constable of Castle, or other, being Keeper of any Gaols where Prisoners accustomedly have been or shall be kept, of Persons indicted of High Treason, being in their Keeping, that no less Fine be set or made for every such Escape than 100 Marks, and more, by the Discretion of the Justices that shall assess such Fines: And for every Escape of Person escaping, being in their Keeping for Suspicion of High Treason, no less Fine to be set nor made than 40 *l.* and for every Escape of Persons indicted of Murder, or Petit Treason.



17. But if a Person committed for High Treason was actually guilty, the Escape is immediately punishable as High Treason also, whether the Person that escaped be ever convicted or not; for there are no Accessories in High Treason, but all who assist the Person guilty of such a Crime, in such a Manner as would make them Accessories to a Felony, are accounted Principals in Treason.

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Treason, 20 *l.* at least, and more, by the Discretion of the Justices that shall assess such Fines: And for every Escape of Persons suspected of Murder or Petit Treason, 10 *l.* or more, by the Discretion of the Justices that shall assess such Fines: And for every Person escaping, being in their Keeping, indicted of Felony, other than Murder or Treason, 10 *l.* and for every Person suspected of Felony, other than Murder or Treason 100 *l.* or more, by the Discretion of the Justices, after the Manner and Quality of their Demerits, saving to every Person such Right and Title to any such Escapes and Fines for the same, or to be quit of such Escapes, or of any other Escapes, as they had, or ought to have had at the Time of making the said Act.

26. And by *Stat. 5 Ann. c. 6.* where any Person shall be convicted of Theft or Larceny, he shall be burnt in the Hand; and the Judges, before whom the Offender is tried, shall at their Discretion award such Offender to the House of Correction or Workhouse, to be kept there, for no less a Time than 6 Months, and for no greater Time than 2 Years, from the Conviction; an Entry whereof is to be made on Record; and in Case such Person refuse to work, the Keeper of such

such House is required to give him due Correction. And such Offender escaping out of such House and retaken, shall be brought before one of the Judges, or two Justices of the Peace (one of the *Quorum*) of the Place where retaken, who shall commit such Offender to some House of Correction or Work-house within such County, &c. where he shall be retaken, there to remain not less than 12 Months, nor more than 4 Years from the Retaking, to work and receive Correction: And if the Keeper of the House neglect his Duty above directed, any Judge of Assize or Gaol-Delivery, upon Complaint and Proof upon Oath, may remove the Keeper from his Office.

C H A P. XIV.

*Of Escapes suffered by Private Persons.*

1. **W**HERE any Person has another lawfully in his Custody, Where guilty. whether upon an Arrest made by himself, or another, he is guilty of an Escape if he suffer him to go at large, before he has discharged himself of him by delivering him over to some other who by Law ought to have the Custody of him.

2. There-

2. Therefore if a Private Person arrest another for Suspicion of Felony, and deliver him into the Custody of another Private Person, who receives him, and suffers him to go at large, both of them are guilty of an Escape; the First is, because he should not have parted with him to any but a publick Officer; and the Latter is, because he having charged himself with the Custody of the Prisoner, he ought to have taken Care of him at his Peril.

3. But if a Private Person has made such an Arrest, and delivered his Prisoner to the proper Officer (as the Sheriff, or his Bailiff, or Constable) from whose Custody the Prisoner escapes, the Party that made such Arrest is not chargeable.

4. If no Officer will receive such Prisoner into his Custody, then the safest Way is to deliver him into the Custody of the Township where the Person who arrested him lives, or perhaps of that Township where the Arrest was made, which will be bound to keep him till the next Gaol-Delivery; but if the Township refuse also to receive him, &c. How can the Person discharge himself before the next Gaol-Delivery, unless the Offender procures Bail.

5. And



5. And a Private Person that is guilty of suffering a *Voluntary Escape*, is liable to the same Punishment as an Officer; and if guilty of suffering a *Negligent Escape*, he is punishable by Fine and Imprisonment, at the Discretion of the Court; for,

6. By the *Stat. 19 Hen. 7. c. 10.* if any Person have any Prisoner in his Keeping, arrested for Suspicion of Felony, Treason, or Murder, and that Person that is so arrested escape, by negligent Keeping, before he be brought to the Gaol, that Person from whom he so escaped, shall forfeit for every Person that does so escape, such Fines as shall be set at the Discretion of the Justices that shall have Authority to assess such Fines, as the Cause shall require, and the same Forfeiture to go to them that be intitled to have such Forfeitures at the Time of making the Act.

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## C H A P. XV.

## Of Breaking Prison.

1. **B**Y the Statute *De frangentibus Prisonam*, 1 Edw. 2. St. 2. none shall have Judgment of Life, or Member, for the Breach of Prison only, unless the Cause for which he was taken and Imprisoned requires such Judgment, if he had been convicted thereupon.

2. Any Place whatsoever, wherein a Person under a lawful Arrest for a supposed Crime, is restrained of his Liberty, whether in the Stocks or Street, or in the common Gaol, or the House of a Constable or Private Person, or the Prison of the Ordinary, is a Prison within the said Statute.

3. And if a Person be taken upon a *Capias*, awarded on an Indictment or Appeal against him, for a supposed Treason or Felony, he is within the Statute if he break the Prison, whether any such Crime were in Truth committed by him or any other Person, or not; because there is an Accusation against him on Record, which makes his Commitment lawful if he be innocent, and the Prosecution groundless.

4. And

4. And if one that is innocent be committed by a lawful *Mittimus*, on a Suspicion of Felony, tho' actually done by another Person, and tho' he be neither indicted nor appealed, if he break the Prison he is within the Statute; for he being legally in Custody, he ought to have submitted till discharged by due Course of Law.

5. And yet, if no Felony was committed, and the Prisoner neither indicted nor appealed; no *Mittimus* for such a supposed Crime will make him guilty within the Statute, if he breaks the Prison; because his Imprisonment was not justifiable.

6. And if there was no just Cause of Suspicion to arrest or commit the Person, tho' a Felony was done; the Breaking of the Prison cannot be Felony, if the *Mittimus* be not in such Form as the Law requires, because in such Case the Lawfulness of his Imprisonment depends on the *Mittimus*.

7. A Breach of Prison must be with Force or Violence, for if a Prisoner go out of the Prison Door, it being open, whether it be by the Consent or Negligence of the Gaoler, or escape in any other Manner without Force or Violence,

lence, he is only guilty of a Misdemeanour, and the Gaoler is punishable.

8. And a Breach of Prison must either be by the Prisoner himself, or by others through his Procurement, or by his Privy; for if others break it without his Consent or Procurement, and by Reason of such Breach he escapes, he can only be indicted for the Escape.

9. And unless the Prisoner escape, a Breach of Prison will not amount to Felony.

10. And it does not signify whether the Offence, for which the Party was imprisoned was Capital when the said Statute was made, or made so by subsequent Statutes; for all Breaches of Prison were Felonies by the Common Law, and Breach of Prison is only restrained by the said Statute, where the Crimes are not Capital.

11. And the Offence must be Capital at the Time of the Offence, and not become such subsequently, to make it Felony.

12. And whoever breaks from any lawful Imprisonment (within the Benefit of the said Statute) is still punishable by Fine and Imprisonment.

C H A P. XVI.

Of Rescues.

1. **R**ESCOUS agrees with Breaking Prison, in most Instances; for, whatever is such a Prison, as by the Common Law the Party was a Felon for breaking it, a Stranger was guilty of a High Crime at least, by rescuing him from it.

2. And where the Party himself for breaking a Prison is saved from the Penalty of a Capital Offender, a Stranger who rescues him, is in like Manner excused.

3. And as the Party that breaks a Prison is not guilty of Felony unless he goes out of it, so neither is a Stranger, unless the Prisoner actually go out of the Prison.

4. And as those Persons, who break a Prison in those Cases where by the Statute *De frangentibus Prisonam* they are saved from Death, are still punishable by Fine and Imprisonment, those that rescue them are in like Manner punishable.

5. But if a Person committed for High Treason breaks the Prison and escapes, he is only guilty of Felony, unless



less he lets others whom he knows to be likewise committed for High Treason escape, and then he is guilty of High Treason; and yet a Stranger, who rescues a Person whom he knows to be committed for High Treason, is in all Cases guilty of High Treason.

6. And notwithstanding a Prisoner may be arraigned for breaking the Prison, before he be arraigned for the Crime he was imprisoned for; yet a Person that rescues a Prisoner for Felony cannot be arraigned for it as for a Felony, before the principal Offender be attainted; but he may be proceeded against (if the King pleases) for a Misprision only; and he may be immediately arraigned if the Prisoner was committed for High Treason, because in High Treason all are Principals.

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## ERRATA.

In Page 134. §. 13. for *cure* read *tho*  
and for *those* read *procure*.

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tho